MONTANA ADMINISTRATIVE REGISTER

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PAGES 430-549

ISSUE NO. 7

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.12.204 and 2.12.205 pertaining to the review and approval process for procurement, development, and oversight of information technology resources and software and management systems, and granting exceptions; and the repeal of ARM 2.12.101, 2.12.201, 2.12.202, 2.12.203, 2.12.206, and 2.12.207 pertaining to the utilization of centralized state facilities, introduction, definitions, agency information technology plans, establishing policies, standards, procedures, and guidelines, and the appeal process as it applies to information technology plans, procurements, and granting exceptions	)	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 28, 2022, the Department of Administration proposes to amend and repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on April 27, 2022, to advise us of the nature of the accommodation that you need. Please contact Don Harris, State Information Technology Services Division, P.O. Box 200113, Helena, Montana 59620-0113; telephone (406) 444-3310; Montana Relay Service 711; facsimile (406) 444-2701; or e-mail to don.harris@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.12.204 REVIEW AND APPROVAL PROCESS FOR PROCUREMENT, DEVELOPMENT, AND OVERSIGHT OF INFORMATION TECHNOLOGY RESOURCES AND SOFTWARE AND MANAGEMENT SYSTEMS (1) through (4)(a) remain the same.

(b) The state chief information officer (CIO) or their designee shall review and approve all formal agreements.

(5) through (6) remain the same.

(7) The state agency director may appeal the department decision in regard to procurements to the CIO. If unsatisfied with the CIO's decision, the state agency director may appeal the department decision to the department director who will resolve the issue.

(8) The CIO will report all appeals and their resolution to the Information Technology Board.

AUTH: 2-17-518, MCA
IMP: 2-17-512, 2-17-524, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The department proposes to amend and repeal the rules in this notice in an effort to cut red tape and streamline regulation for state government agencies as part of Governor Gianforte's Red Tape Relief Initiative described in Executive Order Nos. 1-2021 and 17-2021.

The department is proposing to repeal ARM 2.12.207 but found it necessary to retain the rules pertaining to the appeals process for procurements and exception requests. The verbiage from ARM 2.12.207(2) and (3) has been incorporated into ARM 2.12.204 and 2.12.205 respectively. In addition, the department proposes to update citations to more accurately describe the statutes implemented.

2.12.205 GRANTING EXCEPTIONS (1) State agencies may make a written request for an exception from a rule, policy, standard or procedure in writing to the state chief information officer (CIO). The request must:

(a) through (3) remain the same.

(4) The state agency director may appeal the department decision in regard to exception requests to the CIO. If unsatisfied with the CIO's decision, the state agency director may appeal the department decision to the department director who will resolve the issue.

(5) The CIO will report all appeals and their resolution to the Information Technology Board.

AUTH: 2-17-518, MCA
IMP: 2-17-512, 2-17-515, MCA

4. The department proposes to repeal the following rules:

2.12.101 UTILIZATION OF CENTRALIZED STATE FACILITIES

AUTH: 2-17-512, 2-17-518, 2-17-1103, MCA
IMP: 2-17-512, 2-17-518, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The department proposes to repeal:

- ARM 2.12.101, 2.12.202, 2.12.203, and 2.12.206 and incorporate the information into the Montana Operations Manual (MOM), and
- ARM 2.12.207 and consolidate the portion of this rule that needs to remain within the proposed amended ARM 2.12.204 and 2.12.205.

The rules proposed for repeal unnecessarily duplicate statute or pertain only to the internal operations of government. Repealing these rules allows the department to address such matters in policy, which enables the state to be more nimble in addressing rapidly changing conditions in information technology. The substance of ARM 2.12.101, 2.12.202, 2.12.203, and 2.12.206 will be incorporated into the MOM, which contains policies, procedures, and standards applicable to the internal operations for Montana state government.

2.12.201 INTRODUCTION

AUTH: 2-17-518, MCA
IMP: 2-17-518, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to repeal this rule as it pertains to the rules of subchapter two, in which four of the six rules are proposed to be repealed in this notice. The two remaining rules, ARM 2.12.204 and 2.12.205, speak for themselves and require no introduction.

2.12.202 DEFINITIONS

AUTH: 2-17-518, MCA
IMP: 2-17-506, MCA

2.12.203 AGENCY INFORMATION TECHNOLOGY PLANS

AUTH: 2-17-518, MCA
IMP: 2-17-524, MCA

2.12.206 ESTABLISHING POLICIES, STANDARDS, PROCEDURES, AND GUIDELINES

AUTH: 2-17-518, MCA
IMP: 2-17-512, MCA

2.12.207 APPEAL PROCESS AS IT APPLIES TO INFORMATION TECHNOLOGY PLANS, PROCUREMENTS, AND GRANTING EXCEPTIONS

AUTH: 2-17-518, MCA
IMP: 2-17-515, 2-17-518, 2-17-524, MCA

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Don Harris, Legal Counsel, State Information Technology Services Division, P.O. Box 200113, Helena, Montana 59620-0113; faxed to the office at (406) 444-2701; or e-mailed to don.harris@mt.gov. Comments must be received no later than 5:00 p.m., May 13, 2022.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above no later than 5:00 p.m., April 27, 2022.

7. If the State Information Technology Services Division receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be greater than 25 based on the number of state agencies in Montana.

8. An electronic copy of this proposal notice is available through the department's website at doa.mt.gov/administrative rules. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

9. The State Information Technology Services Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Don Harris, Legal Counsel, State Information Technology Services Division, P.O. Box 200113, Helena, Montana 59620-0113; faxed to the office at (406) 444-2701; or e-mailed to don.harris@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. The department has determined that under 2-4-111, MCA, the proposed amendment and repeal of the above-stated rules will not significantly and directly impact small businesses.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State April 5, 2022.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.13.1001B pertaining to State Grain Lab Fee Schedule	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 5, 2022, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 N. Roberts in Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on May 2, 2022, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201 telephone (406) 444-5402; fax (406) 444-5409; TDD/Montana Relay Service (406) 444-3144; or e-mail agr@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

4.13.1001B GRAIN FEE SCHEDULE (1) Effective Date: The effective date of this rule is ~~March 30, 2018~~ July 1, 2022.

(2) General Provisions: These General provisions applying to all sections of this rule are as follows:

(a) Service Hours: Normal office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. All other hours and holidays will be considered overtime.

(b) Sampling Hours: Sampling hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. An applicant must place service requests with the inspection office by 10:00 a.m. during regular hours for same day inspection/sampling services. All requests for sampling services to be performed outside of normal business hours must be received by 2:00 p.m. of the preceding business day. Sampling services requested to be performed outside of normal office hours, including holidays, will be charged overtime.

(c) Regular Hourly Rate: The regular hourly rate for travel time and stand-by fee is ~~$40~~ $50 per hour per individual assessed in half-hour intervals with a minimum of two hours charged.

(d) Overtime and Holiday Hourly Rate: Overtime and holiday hourly rate is ~~$60~~ $75 per hour per individual assessed in half-hour intervals. A minimum four-hour charge will be assessed except when before or for a continuation of a regular work day, then actual overtime hours will be charged.

(e) Holidays: Holidays are as adopted in 1-1-216, MCA. (e.g., New Year's Day, Martin Luther King Jr. Day, President's Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and State Election Day.)

(f) Mileage and Travel Fees: Mileage, travel time, and travel expenses are as follows:

(i) Mileage Fee: Mileage charges shall be assessed per 2-18-501, MCA for State employees which is equal to the United State Internal Revenue Service (IRS) mileage allotment. Any change to the mileage rate is effective when the IRS changes their standard mileage rate. The mileage charges will be prorated where possible.

(ii) Hourly and Overtime Rate: For each trip requested, the applicant will be charged at the regular hourly rate, except when work is conducted while in overtime status or on holidays. Work conducted while in overtime status or on holidays will be charged at the overtime rate, prorated where possible.

(iii) Travel Expenses: Travel expenses (as defined by Montana Operations Manual Travel Policy with Rates) including but not limited to per diem, lodging, and mileage will be assessed to the applicant in addition to other fees and charges.

(iv) Staffing: Montana State Grain Laboratory will determine the number of personnel to properly provide the service requested. To assure personal safety, Montana State Grain Lab may suspend sampling services due to inclement weather conditions as well as sampling rail cars at night with insufficient lighting, or other potentially hazardous conditions.

(v) Observation: In order to provide official services, Montana State Grain Lab must be physically able to observe elevator personnel sampling and/or sealing a railcar.

(3) Miscellaneous Fees:

~~(a) Copies of certificates, per certified copy.....$2.50~~

~~(b) Fax charge, per transmission.....$3.00~~

~~(c)~~ (a) In case of a data entry or typographical error, a corrected certificate will be issued without a fee.

~~(4)~~ (b) Postage: Actual postage or delivery service charges will be added to sampling and other fees.

~~(5)~~ (c) Special Requests: Requests for services not covered by this rule will be performed at the applicable hourly rate stated herein plus mileage and travel time if applicable.

(4) Sanitation Inspection: A base fee of $100 will be charged per inspection in addition to the applicable hourly rate stated herein plus mileage and travel charges.

(5) Diverter Inspection: A base fee of $100 will be charged per inspection in addition to the applicable hourly rate stated herein plus mileage and travel charges.

(a) Base fee is $500 for certification of new diverters.

~~(6) Priority Service: The priority service fee shall be $10 per submitted sample in addition to the fees set forth in this rule. Submitted priority samples shall be done within 48 hours or less, on a first arrival basis. Priority service includes electronic report. Priority service will be suspended if backlog of regular samples~~

~~exceeds two weeks. If priority service is suspended, all submitted sample fees will be assessed at the appropriate rate.~~

~~(7)~~(6) Payment of Fees and Charges: All department fees and charges for services rendered are due within thirty days of the statement date. Finance charges of $25 per month shall accrue on any balance owed after thirty days of the statement date. If the department does not receive payment within thirty days, services may be withheld until the delinquent account is paid; or cash payment for the subsequent services may be required.

~~(8)~~(7) Retests/Reinspections based on a File Sample and/or New Sample: will cost the same as the original test/inspection.

~~(9)~~(8) Export Documentation Request: Processing and handling fee for sample preparation and export documentation……$7.50 per request

(9) FGIS Administrative Tonnage Fees: In addition to all other applicable fees, FGIS administrative tonnage fees for export grain shipments inspected and/or weighed, excluding land carrier shipments to Canada and Mexico, will be assessed at the current per metric ton rate identified by FGIS Directive 9180.74 Service Fees and Billing Codes, Attachment 1. Invoices will identify assessed administrative tonnage fees as separate line items per applicable carrier/unit type.

(10) FGIS Supervision Fees: In addition to all other applicable fees, FGIS supervision fees for domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico, will be assessed at the current per metric ton rate identified by FGIS Directive 9180.74 Service Fees and Billing Codes, Attachment 2. Invoices will identify assessed supervision fees as separate line items per applicable carrier/unit type.

~~(10)~~ (11) United States Grain Standards Act (USGSA) Fees for official services under the United States Grain Standards Act (USGSA) as amended.

(a) Effective Date: The effective date of this rule is ~~March 30, 2018~~ July 1, 2022.

(b) General Provisions: General provisions applying to all sections of this rule are as follows:

(c) Official Lot Inspection: Official lot inspection sampling with grade, on bulk, boxcar, hopper car, or truck/trailer, per request, sampling and grade only:

(i) Level One: Level one official sampling service when the State Grain Laboratory furnishes the sampling crew……$25.00 per unit

(ii) Level Two: Level two official sampling service when the State Grain Laboratory furnishes a licensed sampler to write identification tickets, supervise elevator employees while sampling and seal samples for delivery to the State Grain Laboratory……$18.00 per unit

(iii) Sampling Only: Sampling only (does not include grade) on bulk, boxcar, hopper car or truck/trailer, per request, (all grains)……..$15.00 per unit

(A) Additional Probes (in addition to original sampling charges)……$15.00 per unit

(iv) Stowage Examination: Stowage examination…….....$8.00 per unit

(v) Sealing Railcars: (Metal Seals) DT or Probe Railcars per Seal, Additional Labor and hourly charges may apply……...~~$1.25~~ $2.50 per seal

Supervise Elevator Personnel applying seals (recording seals on certificate)……..$4.00 per unit

(vi) The Montana State Grain Laboratory is not responsible for the seals after Montana State Grain Laboratory personnel leave the applicant's property. It is the applicant's responsibility to confirm that all seals have been applied by Montana State Grain Laboratory personnel to their satisfaction. In excess of one hour, the hourly rate applies.

(d) Submitted Sample Inspection: inspection includes DKT (damaged kernels total) identified, FM (foreign material) identified, SHBN (shrunken and broken kernels), and DEF (total defects).

(i) Submitted Canola Samples ……$16.00 per sample

(ii) Submitted Spring Wheat (includes DHV testing)……$13.00 per sample

(iii) Submitted (other USGSA sample) ……$10.00 per sample

(e) Laboratory Analyses Fee:

(i) Protein Test: Near Infrared Transmittance (NIRT) on wheat, barley, and corn……..……~~$6.00~~ $7.50 per sample

(ii) Single Factor Determination: Factor only determination ……..…$7.00

(iii) Additional: Additional statements, factors, or results as requested by the applicant including the absence of particular allergens in visible form ……~~$3.00~~ $5.00 each

(iv) Malting Barley Analysis: Malting barley analysis includes actual percent of plump barley, skinned and broken kernels, and thin barley, per request ……..$5.00 per sample

~~(v) Vomitoxin: vomitoxin (DON) per quantitative analysis test ……$30.00 per sample~~

~~(vi) Aflatoxin: aflatoxin per quantitative analysis test ……..$30.00 per sample~~

(v) Mycotoxin: per quantitative analysis test……$50.00 per sample

~~(vii)~~(vi) Composite Sample Preparation (per sample, in composite)……...$1.25 per sample

~~(viii)~~(vii) Composite Sample Preparation (per sample, if requested after grade)……...$2.75 per sample

~~(ix)~~(viii) Return shipping and handling post grading (not to exceed $30/month)……..$3.00 per sample

(f) Official Commercial Services performed under the USGSA:

(i) Official commercial inspection services and fees may be negotiated on a case-by-case basis.

~~(11)~~ (12) Pulse and Processed Commodity Fee Schedule under the Agricultural Marketing Act (AMA):

(a) Effective Date: The effective date of this rule is ~~March 30, 2018~~ July 1, 2022.

(b) General Provisions: General provisions applying to all sections of this rule are as follows, including hourly rate, overtime and holiday rates.

(c) Fees for official services provided under the Agricultural Marketing Act of 1946 (AMA) as amended:

(d) Sampling Fees: Sampling fees for grade or phytosanitary certification:

(i) Bulk Samples: Bulk samples from boxcars, hopper cars, truck/trailers……$15.00 per unit

(A) Additional probes (in addition to original sampling charges).....$15.00 per unit

(ii) Sealing: Metal Seals

DT or Probe per Seal; Additional Labor and hourly charges may apply……~~$1.25~~ $2.50 per seal

Supervise elevator personnel applying seals (recording seals on certificate)……..$4.00 per unit

The Montana State Grain Laboratory is not responsible for the seals after Montana State Grain Laboratory personnel leave the applicant's property. It is the applicant's responsibility to confirm that all seals have been applied by Montana State Grain Laboratory personnel to their satisfaction.

(iii) Bagged Lots: bagged lots or totes……Hourly Rate

(e) Inspection Fee:

(i) Grade Only: grade only per lot or submitted sample: field run……..$24.00 per sample

(ii) Grade Only: grade only per lot or submitted sample: other than field run.....$20.00 per sample

(iii) Single Factor Determination: one factor only determination…….....$7.00

(iv) Additional: additional statements, factors, or results as requested by the applicant……~~$3.00~~ $5.00 per factor

(f) Composite Sample Preparation (per sample in composite)……...$1.25 per sample

(i) Composite Sample Preparation (per sample, if requested after grade)……..……$2.75 per sample

(ii) Seed Count per Ounce……$5.00 per ounce

(iii) Return shipping and handling post grading (not to exceed $30/month)……..$3.00 per sample

(g) Laboratory Analysis Fee:

(i) Falling Number Determinations: falling number determination for wheat……~~$14.00~~ $18.00 per sample

~~(12)~~(13) Fees for laboratory services not performed under the USGSA or AMA: Commodities inspected under Montana Standards

(a) General Provisions: general provisions applying to all sections of this rule are as follows:

(b) Lot Inspection: Lot inspection sampling with grade for bulk, boxcar, hopper car or truck-trailer, per request, sampling and grade only:

(i) Level One: Sampling service fee when the Montana State Grain Laboratory furnishes the sampling crew……..$25.00 per sample

(ii) Level Two: Sampling service fee when the Montana State Grain Laboratory furnishes a licensed sampler to write identification tickets, supervise elevator employees while sampling, and seal samples for delivery to the Montana State Grain Laboratory……$18.00 per sample

(iii) Lot reinspection based on file sample……all regular fees assessed

(iv) Sampling Only: sampling only (does not include grade)—bulk, boxcar, hopper car or truck/trailer, per request (all grains)……$15.00 per sample

(A) Additional Probes (in addition to original sampling charges)……...$15.00 per unit

(B) Sealing: Metal Seals:

DT or Prober per Seal; Additional Labor and Hourly Charges may apply……~~$1.25~~ $2.50 per sample

Supervise Elevator Personnel applying seals (recording seals on certificate)……..$4.00 per unit

The Montana State Grain Laboratory is not responsible for the seals after the Montana State Grain Laboratory personnel leave the applicant's property. It is the applicant's responsibility to confirm that all seals have been applied by Montana State Grain Laboratory personnel to their satisfaction.

(v) Stowage Examination: Stowage examination……..$8.00 per unit

(vi) After First Hour……Hourly rate applies

(c) Submitted Sample Inspection: Submitted sample inspection includes DKT (damaged kernels total) identified, FM (foreign matter) identified, SHBN (shrunken and broken kernels), and DEF (total defects).

(i) Submitted Sample: Submitted Montana specialty crop grades (unless specifically listed) per sample……$10.00 per sample

(ii) Non Official Single Factor Determination…….....$7.00 per factor

(iii) Additional: Additional statements, factors, or results as requested……~~$3.00~~ $5.00 per factor

(d) Submitted Buckwheat Grades:

(i) Processed Buckwheat Sample……$14.00 per sample

(ii) Field Run Buckwheat Sample……$15.00 per sample

(e) Hulless or Hulless Waxy Barley:

(i) Submitted hulless or hulless waxy barley……..$14.00 per sample

(f) Laboratory Analysis Fee:

(i) Protein Test: non-official NIRT (e.g., Khorasan)……~~$6.00~~ $7.50 per sample

(ii) Malting Barley Germination: Malting barley: germination 72-hour blotter……$10.00 per determination

(iii) Non-Official Falling Number: Falling number determination on commodities other than wheat (e.g., Khorasan)……~~$14.00~~ $18.00 per determination

~~(iv) Vomitoxin: Vomitoxin (DON) per quantitative analysis test……$30.00 per sample~~

~~(v) Aflatoxin: Aflatoxin per quantitative analysis test……..$30.00 per sample~~

(iv) Mycotoxin: per quantitative analysis test……$50.00 per sample

~~(vi)~~ (v) Composite Sample Preparation (per sample in composite)……$1.25 per sample

~~(vii)~~ (vi) Composite Sample Preparation (per sample, if requested after grade).....$2.75 per sample

~~(viii)~~ (vii) Return shipping and handling post grading (not to exceed $30/month).....$3.00 per sample

AUTH: 80-4-403, 80-4-721, MCA
IMP: 80-4-721, MCA

REASON: State Grain Lab fee changes represent the Montana Department of Agriculture's aim to align sampling and grading activities with actual costs of services. The United States Department of Agriculture (USDA) Federal Grain Inspection Service (FGIS) has approved all requested changes. FGIS also concurs that fees accurately reflect the cost of services provided and are consistent with fees charged by other FGIS providers.

Anticipated revenue changes for fees and thus the projected impact to small businesses in Montana are listed in Table 1 below.

NEW FEES	CURRENT FEE	New FEE	IMPACT/ AVE # PER USER (FY 2021)	AVG. INCREASE PER CUSTOMER
Sanitation inspection	Travel, HPD	$100 + Travel, HPD	$1,200/6	$200
Diverter certification	Travel, HPD	$500 + Travel HPD	$500/1	$500
Diverter inspection	Travel, HPD	$100 + Travel, HPD	$400/ 4	$100
FEE CHANGES				
Applying Seals	$1.25	$2.50	$18,610/7	$2,659
Mycotoxin testing	$30.00 (Vomitoxin, Aflatoxin)	$50.00 (Vomitoxin, Aflatoxin, Ochratoxin)	$4,560/34	$134
Regular hourly rate AMA	$40.00	$50.00	$47,855/26	$1,063
Bagged lots or Totes, hourly rate	$40.00	$50.00	$16,455/48	$343
Overtime & Holiday AMA	$60.00	$75.00	$4,660/26	$179
Regular hourly rate USGSA	$40.00	$50.00	$2,411/24	$100
Overtime & Holiday USGSA	$60.00	$75.00	$165/6	$28
Additional Statements, each	$3.00	$5.00	$40,966/208	$197
Falling Number Det.	$14.00	$18.00	$16,532/251	$66
Protein, per sample	$6.00	$7.50	$10,677/394	$27
REMOVE FEE				
Copies of Certificates, each	$2.50	$0	None	
Fax charges, each	$3.00	$0	None	
Priority Service, per sample	$10.00	$0	None	
TOTALS	**$1,006,954**	**$1,169,844**	**$164,990**	**16%**

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-5402; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., May 13, 2022.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will significantly and directly impact small businesses. See Table 1 above for estimated economic impact for proposed fees per customer.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christy Clark
Christy Clark
Director
Agriculture

Certified to the Secretary of State April 5, 2022.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the adoption of New Rule I pertaining to Credit for Reinsurance – Reciprocal Jurisdictions and the amendment of ARM 6.6.3814 pertaining to Forms	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On May 5, 2022, at 10:30 a.m., the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) will hold a public hearing in the basement conference room of the commissioner's office at 840 Helena Avenue, in Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact CSI no later than 5:00 p.m. on April 26, 2022, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail csi@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I CREDIT FOR REINSURANCE – RECIPROCAL JURISDICTIONS (1) Pursuant to 33-2-1216, MCA, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this subchapter.

(2) A "Reciprocal jurisdiction" is a jurisdiction, as designated by the commissioner pursuant to (4), that meets one of the following:

(a) a non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of (2), a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

(b) a U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

(c) a qualified jurisdiction, as determined by the commissioner pursuant to 33-2-1216, MCA, which is not otherwise described in (2)(a) or (b) and which the commissioner determines meets all of the following additional requirements:

(i) provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

(ii) does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

(iii) recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

(iv) provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

(3) Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below.

(a) The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.

(b) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in (3)(g) according to the methodology of its domiciliary jurisdiction, in the following amounts:

(i) no less than $250,000,000; or

(ii) if the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(A) minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least $250,000,000; and

(B) a central fund containing a balance of the equivalent of at least $250,000,000.

(c) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(i) if the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in (2)(a), the ratio specified in the applicable covered agreement;

(ii) if the assuming insurer is domiciled in a reciprocal jurisdiction as defined in (2)(b), a risk-based capital (RBC) ratio of 300% of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

(iii) if the assuming insurer is domiciled in a reciprocal jurisdiction as defined in (2)(c), after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.

(d) The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1, of its agreement to the following:

(i) The assuming insurer must agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in (3)(b) or (c), or if any regulatory action is taken against it for serious noncompliance with applicable law.

(ii) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process.

(A) The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction.

(B) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

(iii) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

(iv) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

(v) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide 100% security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of 33-2-1216 and 33-2-1217, MCA, and ARM 6.6.3815, 6.6.3863, or 6.6.3868. For purposes of this subchapter, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to

reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

(vi) The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in (3)(e).

(e) The assuming insurer or its legal successor must provide, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:

(i) for the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

(ii) for the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

(iii) prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

(iv) prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in (3)(f).

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

(i) more than 15% of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner;

(ii) more than 15% of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer $100,000, or as otherwise specified in a covered agreement; or

(iii) the aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds $50,000,000, or as otherwise specified in a covered agreement.

(g) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis that the assuming insurer complies with the requirements set forth in (3)(b) and (c).

(h) Nothing in (3) precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(4) The commissioner shall timely create and publish a list of reciprocal jurisdictions.

(a) A list of reciprocal jurisdictions is published through the NAIC Committee Process. The commissioner's list shall include any reciprocal jurisdiction as defined under (2)(a) and (b), and shall consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on

the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC Committee Process.

(b) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC Committee Process, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under (2)(a) and (b). Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to 33-2-1216 and 33-2-1217, MCA.

(5) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this rule and to which cessions shall be granted credit in accordance with this rule.

(a) If an NAIC accredited jurisdiction has determined that the conditions set forth in (3) have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with (5). The commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of (3).

(b) When requesting that the commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

(6) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this rule, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this rule.

(a) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with 33-2-1217, MCA.

(b) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of 33-2-1217, MCA.

(7) Before denying statement credit or imposing a requirement to post security with respect to (6) or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner:

(a) shall communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in (3);

(b) shall provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial

communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

(c) if, after the expiration of 90 days or less, as set out in (7)(b), determines that no or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements as set out in (7); and

(d) shall provide a written explanation to the assuming insurer of any of the requirements set out in (7).

(8) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

AUTH: 33-2-1216, MCA
IMP: 33-2-1216, 33-2-1217, MCA

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

6.6.3814 FORMS (1) The following forms (and related instructions) are found on the web site of the Commissioner of Securities and Insurance, Office of the State Auditor:

(a) Form AR-1;

(b) Form CR-1;

(c) Form RJ-1;

~~(c)~~ (d) Form CR-F; and

~~(d)~~ (e) Form CR-S.

AUTH: 33-1-313, 33-2-1216, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1217, MCA

5. REASON: The Commissioner of Securities and Insurance, Montana State Auditor, Troy Downing (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance. Chapter 65, passed by the 67th Montana Legislature (effective March 23, 2021), amended 33-2-1216 and 33-2-1217, MCA, regarding credit for reinsurance, a practice regularly used in the insurance industry.

The National Association of Insurance Commissioners (NAIC) is an organization of insurance regulators from the 50 states, the District of Columbia, and the U.S. Territories. The NAIC provides a forum for the development of uniform policy and regulation when uniformity is appropriate. The statutory amendments passed in 2021 were based on the NAIC model law regarding credit for reinsurance. Proposed New Rule I and the amendment to ARM 6.6.3814 are derived from the NAIC Credit for Reinsurance Model Regulation (#786), Section 9. They ensure uniformity with other states and are necessary to meet the NAIC accreditation standards.

The proposed new rule and amendment of an existing rule regarding credit for reinsurance are necessary to implement the statutory changes made in 2021 and conform with the NAIC model regulations.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., May 13, 2022.

7. Kirsten Madsen, legal counsel for CSI, has been designated to preside over and conduct this hearing.

8. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 6 above or may be made by completing a request form at any rules hearing held by CSI.

9. An electronic copy of this proposal notice is available through the Secretary of State's website at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, CSI has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ *Kirsten Madsen*
Kirsten Madsen
Rule Reviewer

/s/ *Ole Olson*
Ole Olson
Chief Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State April 5, 2022.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to state diplomas	)	NOTICE OF PROPOSED ADOPTION
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 10, 2022, the Superintendent of Public Instruction proposes to adopt the above-stated rule.

2. The Office of Public Instruction (OPI) will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact OPI no later than 5:00 p.m. on April 29, 2022, to advise us of the nature of the accommodation that you need. Please contact Brian O'Leary, Office of Public Instruction, 1227 11th Avenue, Helena, Montana, 59601; telephone (406) 444-3559; fax (406) 444- 444-2893; or e-mail brian.o'leary@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I STATE DIPLOMAS (1) The eligibility and qualifications for pursing a Montana proficiency-based diploma (state diploma) pursuant to 20-3-110, MCA, are as follows:

(a) An individual is eligible for a state diploma if that individual:

(i) is at least 17 years of age and otherwise would be eligible for admittance to school under 20-5-101, MCA; and

(ii) demonstrates, by a written communication from the individual's school district, that the individual is not capable of completing the school district's graduation requirements; and

(b) An eligible individual qualifies for a state diploma if that individual:

(i) completes a high school equivalency diploma under ARM Title 10, chapter 6, subchapter 1 with a score at least 20% above the minimum passing score;

(ii) completes a program that includes a community-based mentorship for the individual and that the Superintendent of Public Instruction has determined meets the requirements of 20-3-110(1)(b), MCA; and

(iii) prepares a written plan for the individual's pathway to college or career readiness that has been approved by the mentor and the program under (1)(b)(ii).

(2) All state diplomas are issued by the superintendent, who may authorize the program under (1)(b)(ii) to present the diploma to an eligible individual.

(3) The superintendent is aware that these rules cannot cover all the special circumstances that can arise when determining whether an individual has demonstrated the requirements to receive a state diploma. Therefore, the superintendent may exercise judgment to issue a state diploma in unusual cases

when the eligible individual has evidenced in writing specific facts that demonstrate the proficiency, perseverance, and dedication required by 20-3-110, MCA.

AUTH: 20-3-110, MCA
IMP: 20-3-110, MCA

REASON: The proposed rule would set standards for eligibility and qualifications for a state diploma, as required by the new legislation in 20-3-110, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Brian O'Leary, Office of Public Instruction, 1227 11th Avenue, Helena, Montana, 59601; telephone (406) 444-3559; fax (406) 444- 444-2893; or e-mail brian.o'leary@mt.gov, and must be received no later than 5:00 p.m., May 13, 2022.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Brian O'Leary at the above address no later than 5:00 p.m., May 13, 2022.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 11 persons based on an estimated 110 eligible candidates for a state diploma in 2022.

7. OPI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 above or may be made by completing a request form at any rules hearing held by OPI.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on April 4, 2022.

10. With regard to the requirements of 2-4-111, MCA, the OPI has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Robert Stutz
Robert Stutz
Rule Reviewer

/s/ Elsie Arntzen
Elsie Arntzen
Superintendent of Public Instruction
Office of Public Instruction

Certified to the Secretary of State April 5, 2022.

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.189.401 fee schedule and 24.189.910 behavior analyst experience and supervision	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 6, 2022, at 1:00 p.m., a public hearing will be held via remote conferencing to consider the proposed amendment of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/89549850175
Meeting ID: 895 4985 0175, Passcode: 208405
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 895 4985 0175, Passcode: 208405

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Psychologists (board) no later than 5:00 p.m., on April 29, 2022, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; Montana Relay 711; facsimile (406) 841-2305; or e-mail dlibsdpsy@mt.gov (board's e-mail).

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.189.401 FEE SCHEDULE (1) The department will collect the following fees, none of which are refundable:

(a) Psychologist application fee	$~~175~~ 450
(b) Psychologist active license renewal fee	~~600~~ 450
(c) and (d) remain the same.	
(e) Behavior analyst application fee	~~600~~ 450
(f) and (g) remain the same.	
(h) Behavior analyst active license renewal fee	~~600~~ 450
(i) and (2) remain the same.	

AUTH: 37-1-134, 37-17-202, 37-17-406, MCA
IMP: 37-1-134, 37-1-141, 37-17-302, 37-17-403, 37-17-406, MCA

REASON: Along with the elimination of the board's oral examination requirement a year ago, the board implemented the new psychologist by experience license on January 1, 2021, to replace the senior psychologist license. This has created a more efficient pathway for out-of-state psychologists to become licensed in Montana. These changes called for an analysis of the board's budget which showed a decrease in expenses and an increase in revenue that is projected to be sustained for at least the next five years. The board determined it is reasonably necessary to amend this rule and correct the inequitable renewal fees for psychologists and application and renewal fees for behavior analysts. The board estimates these changes will affect 331 licensees and applicants and result in a $34,259 decrease in annual revenue.

24.189.910 BEHAVIOR ANALYST EXPERIENCE AND SUPERVISION

~~(1) Upon licensure application, behavior analyst applicants shall provide proof, together with the form prescribed by the department, reflecting 100 hours of supervised experience b+
3026eyond those hours required by the BACB.~~

~~(2) Each behavior analyst applicant certified by the BACB on or before December 31, 2017, shall be granted one year in which to provide proof to the board demonstrating the applicant has met the experience requirements of this rule.~~

(3) through (13) remain the same but are renumbered (1) through (11).

AUTH: 37-17-406, MCA
IMP: 37-17-403, 37-17-405, 37-17-406, MCA

REASON: During an annual administrative rule review, the board identified the behavior analyst licensing requirement for supervised experience exceeds what is required in national standards. To streamline the licensing process and remove unnecessary licensure barriers, the board is amending this rule to strike the requirement from (1) and (2).

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile (406) 841-2305; or e-mail dlibsdpsy@mt.gov, and must be received no later than 5:00 p.m., May 13, 2022.

5. An electronic copy of this notice of public hearing is available at www.psy.mt.gov (department and board's website). Although the department strives to keep its websites accessible at all times, concerned persons should be aware that websites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a website do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons wishing to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies the intent to receive notices regarding all board administrative rulemaking proceedings or a particular subject matter. The request must indicate whether e-mail or standard mail is preferred and may be sent or delivered to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to (406) 841-2305; e-mailed to dlibsdpsy@mt.gov; or by completing a request form at any rules hearing held by the board.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.401 will significantly and directly impact small businesses and prepared a small business impact analysis regarding this amendment. The group of small businesses affected are psychologist and behavior analyst licensees in Montana. There are 331 licensees affected by this proposal. This amendment will result in an increase in the psychologist application fee of $275, a reduction of the psychologist renewal fee by $150, and a reduction of the behavior analyst application and renewal fee by $150. The board conducted a budget analysis, and the result allows for the correction of inequitable psychologist and behavior analyst renewal fees, with an increase to the psychologist application fee. The board has no alternative methods that may be implemented at this time.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.910 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; facsimile (406) 841-2305; or to dlibsdpsy@mt.gov.

9. Department staff has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS
DR. LORETTA BOLYARD, Ph.D., CHAIR

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 5, 2022.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.207.203 and 24.207.504 pertaining to real property appraiser qualification and continuing education	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 9, 2022, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/86877013997
Meeting ID: 868 7701 3997, Passcode: 833204
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 868 7701 3997, Passcode: 833204

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers no later than 5:00 p.m., on May 2, 2022, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; Montana Relay 711; facsimile (406) 841-2305; or dlibsdrea@mt.gov (board's e-mail).

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.207.203 INCORPORATION BY REFERENCE OF THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA (1) Except as stated in (3) and ARM 24.207.508 regarding ad valorem appraisal experience, the board adopts and incorporates by reference the Real Property Appraiser Qualification Criteria effective January 1, ~~2021~~ 2022, in its entirety, inclusive of the criteria, interpretations, guide notes, and Q&A, and Policy Statements, published by the Appraiser Qualifications Board of the Appraisal Foundation. The Real Property Appraiser Qualification Criteria are commonly referred to as the "AQB criteria." A copy of the criteria and policy statements are available from the Appraisal Foundation at

www.appraisalfoundation.org, or 1155 15th Street NW, Suite 1111, Washington, DC 20005.

(2) and (3) remain the same.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-1-203, 37-1-321, 37-54-105, MCA

REASON: The Appraiser Qualifications Board (AQB) published a new version of the Real Property Appraiser Qualification Criteria effective January 1, 2022. The board determined it is reasonably necessary to amend this rule to incorporate the new version of the criteria.

24.207.504 APPROVAL OF QUALIFYING AND CONTINUING EDUCATION COURSES (1) through (11)(a) remain the same.

(b) an appropriate and complete application has been filed and approved by the board; and

~~(c) the distance education course provider must be certified by the International Distance Education Certification Center (IDECC) and provide appropriate documentation that the IDECC certification is in effect. Approval will cease immediately should IDECC certification be discontinued for any reason; and~~

(d) remains the same but is renumbered (c).

(12) through (14) remain the same.

AUTH: 37-1-131, 37-1-319, 37-54-105, MCA
IMP: 37-1-131, 37-1-306, 37-54-105, 37-54-202, MCA

REASON: The board is amending this rule to remove the single-source IDECC approval mechanism since the AQB has broadened acceptable course delivery mechanism sources. Since these other sources are stated in the AQB criteria and the board has adopted the criteria by reference, it is reasonably necessary to strike the IDECC reference.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdrea@mt.gov, and must be received no later than 5:00 p.m., May 13, 2022.

5. An electronic copy of this notice of public hearing is available at www.realestateappraiser.mt.gov. Although the department strives to keep its websites accessible at all times, concerned persons should be aware that websites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a website do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons wishing to have their

name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies the intent to receive notices of all board administrative rulemaking proceedings or a particular subject matter. The request must indicate whether e-mail or standard mail is preferred and may be sent or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to (406) 841-2305; e-mailed to dlibsdrea@mt.gov; or by completing a request form at any rules hearing held by the board.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.207.203 and 24.207.504 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; facsimile (406) 841-2305; or to dlibsdrea@mt.gov.

9. Department staff has been designated to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS
PETER FONTANA, CRA
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 5, 2022.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.301.109, 24.301.131, 24.301.138, 24.301.142, 24.301.146, 24.301.154, 24.301.161, 24.301.171, 24.301.172, 24.301.173, 24.301.175, and 24.301.181 pertaining to building codes incorporation by reference; 24.301.201, 24.301.202, 24.301.204, 24.301.205, 24.301.206, 24.301.207, 24.301.208, 24.301.210, 24.301.212, 24.301.213, and 24.301.231 pertaining to local government enforcement; 24.301.301, 24.301.351, and 24.301.371 pertaining to plumbing requirements; 24.301.401, 24.301.411, 24.301.431, and 24.301.451 pertaining to electrical requirements; 24.301.602, 24.301.603, 24.301.606, and 24.301.607 pertaining to the elevator code; and the repeal of 24.301.209 special reports	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On May 6, 2022, at 1:00 p.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/81929206197
Meeting ID: 819 2920 6197, Passcode: 573426
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: Meeting ID: 819 2920 6197, Passcode: 573426

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Building Codes Program no later than 5:00 p.m., on April 29, 2022, to advise us of the nature of the accommodation that you need. Please contact Traci Collett, Building Codes Program, 301 South Park Avenue, P.O.

Box 200517, Helena, Montana 59620-0517; telephone (406) 841-2016; Montana Relay 711; facsimile (406) 841-2050; or buildingcodes@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: To provide reasonably uniform standards for construction and materials in the state building code as required by 50-60-201, MCA, the Building and Commercial Measurements Bureau of the Department of Labor and Industry (department) is amending certain administrative rules to adopt and incorporate by reference the new editions of numerous nationally recognized building codes, with stated exceptions. The department is also proposing amendments throughout the rules in response to and to coincide with the adoption and incorporation by reference of these building codes. The revisions follow the three-year update (2021) generally used by code companies. The department sought and received significant stakeholder input on the changes in three listening sessions during May and June 2021. On December 8, 2021, the Building Codes Council convened to consider the changes and gave their support on all of the proposed changes.

A majority of the proposed changes only renumber sections or tables of the updated codes without substantive changes. Other amendments will improve readability, such as utilizing acronyms and abbreviations, and correcting references from the Building and Commercial Measurements Bureau to the department as the entity responsible for enforcing code compliance. Additional grammatical and numbering changes are necessary to comply with ARM formatting requirements. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

4. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.301.109 DEFINITIONS (1) As used in this chapter:
(a) remains the same.
(b) "IBC" means the International Building Code, ~~2018~~ 2021 edition.
(c) "IMC" means the International Mechanical Code, ~~2018~~ 2021 edition.
(d) "IFGC" means the International Fuel Gas Code, ~~2018~~ 2021 edition.

AUTH: 50-60-203, MCA
IMP: 50-60-203, MCA

REASON: The department is updating the edition dates in the definitions to align with the proposed adoption of the 2021 codes in this notice.

24.301.131 INCORPORATION BY REFERENCE OF INTERNATIONAL BUILDING CODE (1) The department adopts and incorporates by reference the International Building Code, ~~2018~~ 2021 edition, unless another edition is specifically stated, together with Appendix Chapter C (Group U - Agricultural Buildings).
(2) and (3) remain the same.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

24.301.138 CALCULATION OF FEES (1) through (4)(c) remain the same.

(d) For purposes of modifying the building valuation values derived from the square-foot method calculations of (4)(c), the calculated building valuation shall be multiplied by a factor of ~~0.70~~ 0.35 to arrive at a final calculated building valuation. For purposes of modifying firm bids or the design professional's preliminary cost estimate, the provided valuation shall be multiplied by a factor of 0.6 to arrive at a final building valuation.

(e) through (8) remain the same.

AUTH: 50-60-104, 50-60-203, MCA
IMP: 50-60-103, 50-60-104, 50-60-203, MCA

REASON: It is reasonably necessary to reduce the building valuation multiplier in (1)(d) and add a new multiplier for firm bids and design professional's estimates to reduce fees and comply with 17-2-302 and 17-2-303, MCA, by maintaining the Building Codes Program's (program) cash balance at less than twice the annual appropriation. The reductions will gradually decrease the program's cash balance to meet statutory requirements while ensuring adequate revenue to support program activities through the next biennium. Currently, the building codes account is $2M over the limit allowed to be kept in reserve. The department notes that all the proposed fee changes have been vetted publicly and endorsed by vote of the Montana Building Codes Council.

The department estimates the fee reductions will affect approximately 1,100 firm bidders and design professionals and applicants for inspections or re-inspections for elevators, escalators, and moving walks, and result in a $1,582,646.50 reduction in annual revenue.

24.301.142 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE ONLY TO THE DEPARTMENT'S CODE ENFORCEMENT PROGRAM (1) through (7)(b) remain the same.

(c) "Formal Written Approval: In situations where the department was unable to perform the required inspections referenced in Section 110 of the IBC, but no significant deficiencies from the state building code have been noted, the ~~bureau~~ department may issue a letter of formal written approval in lieu of a certificate of occupancy."

(8) through (10) remain the same.

AUTH: 50-60-203, MCA
IMP: 50-60-107, 50-60-108, 50-60-109, 50-60-203, 50-60-212, MCA

REASON: The department is amending (7)(c) to clarify it is the department, not the bureau that issues formal written approval in lieu of a certificate of occupancy.

24.301.146 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE TO BOTH THE DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS (1) through (8) remain the same.

(9) Subsection 107.3.1 is ~~amended by the addition of~~ deleted and replaced with the following sentence: "When the building official issues the permit where plans are required, the building official shall approve the construction documents, with corrections as required, or with adequate written resolution of deficiencies noted in plan review comments."

(10) through (13) remain the same.

(14) Subsection 903.3.5, Inadequate Water Supply, is amended by addition of the following: "This subsection shall apply to buildings which are required by the International Building Code to be provided with an automatic fire extinguishing system and do not have access to an existing multiple user water supply system, such as a municipal water supply system or a private community water supply system, capable of providing the water supply requirements of National Fire Protection Association Standard for the Installation of Sprinkler Systems, ~~2016~~ 2019 edition (NFPA 13). Under such circumstances, water storage requirements may be modified by the building official. The modified design shall include sufficient storage onsite to operate the hydraulically remote area for the response time of the local fire department. Response time is the time from alarm to the time the fire department can apply water to the fire. Response time shall be established by the use of the formula T = 6.5 minutes (mobilization time) + 1.7 minutes/mile D (travel time), where T is response time, in minutes, and D is distance, in miles, from the fire station to the building. The modified water supply shall be sufficient to operate the system for the response time calculated above but not be less than 20 minutes. Water supply requirements shall be established by using the area/density method as defined in NFPA 13. A reduction in water storage of up to 50 percent, but not less than that required for a 20-minute supply is allowed. All automatic fire sprinkler system designs and components shall be in compliance with NFPA 13. When a modified water storage is allowed, the automatic fire sprinkler system must be equipped with a flow alarm, digital alarm communicator transmitter, and a fire department connection. The automatic fire sprinkler system shall be monitored by an approved central station in accordance with NFPA 72, National Fire Alarm Code, ~~2016~~ 2019 edition."

(15) The following modifications apply to IBC Group A-3 occupancies, and IBC Group A-4 occupancies:

(a) Buildings with a fire area less than 6,000 square feet without feasible access to a municipal water supply shall be permitted to be constructed without a fire sprinkler system, provided the following conditions are met:

(i) buildings are not more than one story above grade plane;

(ii) the occupant load factor of '5 net' shall be used to calculated egress requirements in accordance with IBC chapter 10;

(iii) at least 50 percent of the number and minimum width or required capacity of the exits shall discharge directly to the exterior of the building;

(iv) the maximum common path of egress travel distance shall not exceed 75 feet;

(v) local fire department response time is less than 20 minutes; and

(vi) a fire alarm system is installed in accordance with NFPA 72.

(b) The building official may waive, in the building official's discretion, one of the required conditions in (a) if the exterior of the building is constructed of noncombustible materials.

(15) and (15)(a) remain the same but are renumbered (16) and (16)(a).

(i) Installation of Sprinkler Systems: NFPA 13 Standard for the Installation of Sprinkler Systems, ~~2016~~ 2019 edition.

(ii) Installation of Sprinkler Systems in Group R Occupancies Four Stories or Less: NFPA 13R Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, ~~2016~~ 2019 edition.

(b) Standpipe Systems: NFPA 14 Standard for the Installation of Standpipe and Hose Systems, ~~2016~~ 2019 edition.

(c) remains the same.

(16) remains the same but is renumbered (17).

(18) Subsection 903.2.4.2 is amended to include: "Exception: An automatic sprinkler system is not required where a Group F1 fire area used for the manufacture of distilled spirits is not more than one story above grade plane, and not exceeding 2,500 square feet."

(19) Subsection 903.2.9.3 is amended to include: "Exception: An automatic sprinkler system is not required where a Group S1 fire area used for the bulk storage of distilled spirits or wine is not more than one story above grade plane, and not exceeding 2,500 square feet."

(17) through (22) remain the same but are renumbered (20) through (25).

~~(23)~~ (26) Subsection 2902.3, Required Public Toilet Facilities, is deleted ~~in its entirety.~~ and replaced with "Required public toilet facilities shall be provided in accordance with the Uniform Plumbing Code 2021 Subsection 422.4."

(24) and (25) remain the same but are renumbered (27) and (28).

~~(26)~~ (29) Delete Section 3109 in its entirety and replace with the International Swimming Pool and Spa Code, ~~2018~~ 2021 edition as adopted in ARM 24.301.175.

(27) through (33) remain the same but are renumbered (30) through (36).

~~(34)~~ (37) Aircraft hangars, even if for private use, are not exempt as private garages or private storage structures unless located on the same parcel of private property or lot as the owner's residence. Aircraft hangars that are used in conjunction with a commercial activity of any kind are not exempt as private garages or private storage structures regardless of location. Aircraft hangars, less than ~~3000~~ 5000 square feet in size, that are used only for parking of an aircraft and where no repair work or welding is performed ~~and~~, where no fuel is dispensed, and where no other attached portions of the building are occupied and classified as an A, B, R, I, or M, will be classified as utility buildings (Group U).

(35) through (39) remain the same but are renumbered (38) through (42).

(a) ~~Category A assisted~~ Assisted living facilities with 9 to 19 ambulatory residents, as referenced as a category A facility in 50-5-226, MCA, will be classified as an R-4 occupancy for building permit and construction standard purposes.

(i) Automatic fire sprinkler systems are not required.

(ii) A fire alarm system is required in all common spaces.

(b) ~~Category B assisted~~ Assisted living facilities with ~~9 to 19~~ 5 or more non-ambulatory residents, as referenced as category B, C, and D facilities in 50-5-226,

MCA, will be classified as an R-4 occupancy for building permit and construction standards purposes. ~~In addition, a Category B assisted living facility shall have an automatic fire sprinkler system and provide an accessible sleeping room or space for each Category B resident.~~

(i) An automatic fire sprinkler system is required.

(ii) Each non-ambulatory resident shall have an accessible sleeping room or space.

(c) An assisted living facility with 20 or more ambulatory or non-ambulatory residents~~, in any combination of Category A or Category B,~~ will be classified as an R-2 occupancy for building permit and construction standards and shall meet accessibility standards as provided in IBC ~~Sub~~section 1103 ~~of the International Building Code~~.

(i) Automatic fire sprinkler systems are required.

(ii) A fire wall cannot be used to isolate and reduce occupant loads in order to avoid an R-2 classification.

(40) through (44) remain the same but are renumbered (43) through (47).

AUTH: 50-60-203, MCA
IMP: 50-60-101, 50-60-102, 50-60-104, 50-60-201, 50-60-203, 50-60-205, MCA

REASON: The department is amending (9) for clarity in meaning. In response to concerns received during the public vetting of the changes, the department determined it is reasonably necessary to add (15) to provide reasonable alternatives for small rural community centers and gymnasiums that do not have access to an adequate water supply to allow for a properly functioning automatic sprinkler system.

The department is adding two new exemptions at (18) and (19) to address new requirements in Subsection 903 for large distilleries. As the new subsections of 903 would apply to Montana's many small batch distilleries, the exemptions are reasonably necessary to balance cost of construction with safety as required in 50-60-201(3), MCA.

The department is amending (26) to address stakeholder confusion and clarify that public buildings do require toilet facilities and must comply with the requirements in the Uniform Plumbing Code.

It is reasonably necessary to amend (37) regarding aircraft storage buildings that are solely used for storage and allowed to be classified as utility buildings. Stakeholders are utilizing larger airplanes for private use, and if no occupied space exists, can still use these types of buildings to park their airplanes without additional risk to public safety.

The department is amending (42) to remove confusion about the differences in fire alarm system and automatic sprinkler system requirements between assisted living facilities providing care to ambulatory residents as opposed to non-ambulatory residents.

24.301.154 INCORPORATION BY REFERENCE OF INTERNATIONAL RESIDENTIAL CODE (1) remains the same.

(2) The department adopts and incorporates by reference the International Residential Code, ~~2018~~ 2021 edition, referred to as the International Residential Code or IRC, together with:

(a) and (b) remain the same.

(c) Appendix F, Radon Resistant New Construction. Appendix F may be adopted by a certified city, county, or town building code jurisdiction. The department shall not apply or enforce Appendix F.

(3) through (24) remain the same.

AUTH: 50-60-203, MCA
IMP: 50-60-102, 50-60-201, 50-60-203, MCA

REASON: With the update to the 2021 edition of the International Residential Code, local jurisdictions are able to utilize the appendix for radon if they choose. It is reasonably necessary to add this appendix at (2)(c) to address elevated levels of radon present throughout Montana.

24.301.161 INCORPORATION BY REFERENCE OF INTERNATIONAL ENERGY CONSERVATION CODE (1) The ~~Department of Labor and Industry~~ department adopts and incorporates by reference the International Code Council's International Energy Conservation Code, ~~2018~~ 2021 edition, referred to as the International Energy Conservation Code, unless another edition is specifically stated, together with the following Appendix and amendments:

(a) remains the same.

(b) Subsections C105.2 and R105.2, Required Inspections, are deleted in their entirety when the code is used by the ~~Building Codes Program of the Department of Labor and Industry~~ department. It remains undeleted and available for use for certified local governments using the code.

~~(c) Sections C202 and R202, General Definitions, the definition for "Air Barrier" is deleted and replaced with a new definition for "Air Barrier" as follows: "Air Barrier: Material(s) assembled and joined together to provide a barrier to air leakage through and into the building envelope. An air barrier may be a single material or a combination of materials."~~

~~(d)~~ (c) Table R402.1.2, INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT, is amending requirements for Climate Zone ~~"~~6~~"~~ as WOOD FRAMED WALL R-VALUE 'R-21 or R-20 + R-5ci or R-13 + R-10ci or R-15ci.' ~~shown below in the table:~~

~~Climate Zone~~	~~Fenestration *U*-Factor(b)~~	~~Skylight(b) *U*-Factor~~	~~Glazed Penetration SHGC(b,d)~~	~~Ceiling *R*-Value~~	~~Wood Framed Wall *R*-Value~~
~~6~~	~~0.30~~	~~0.55~~	~~NR~~	~~49~~	~~21 or 13+10(h)~~

~~Mass Wall *R*-Value(i)~~	~~Floor *R*-Value~~	~~Basement(c) Wall~~	~~Slab(b) *R*-Value~~	~~Crawl Space Wall(c)~~

		~~*R*-Value~~	~~& Depth~~	~~*R*-Value~~
~~15/20~~	~~30(g)~~	~~15/19~~	~~10, 4 ft~~	~~15/19~~

(e) remains the same but is renumbered (d).

~~(f)~~ (e) Subsection R402.2.2, Ceilings Without ~~Attic Spaces~~ Attics, is deleted and replaced with the following: "Where ~~Section 402.1.2~~ Table R402.1.3 would require insulation levels above R-30 and the design of the roof/ceiling assembly does not allow sufficient space for the required insulation, the minimum required insulation for such roof/ceiling assemblies shall be R-30. This reduction of insulation from the requirements of ~~Section 402.1.2~~ Table R402.1.3, shall be limited to 250 square feet or ten percent of the total insulated ceiling area, whichever is less. This reduction shall not apply to the *U*-factor alternative approach in Section R402.1.4, and the total UA alternative in Section R402.1.5."

~~(g)~~ (f) Subsection ~~R402.2.11~~ R402.2.10, Crawl Space Walls, is deleted and replaced with the following: "As an alternative to insulating floors over crawl spaces, crawl space walls shall be permitted to be insulated when the crawl space is not vented to the outside. Temporary crawl space vent openings are allowed during construction for crawl spaces that have insulated crawl space walls. These temporary crawl space vent openings shall be closed, sealed, and insulated to the same R-value of the surrounding crawl space wall insulation once construction is complete and prior to the time that the final building inspection would occur. Crawl space wall insulation shall be permanently fastened to the wall and shall extend downward from the floor, the entire height of the crawl space wall. Exposed earth in unvented crawl space foundations shall be covered with a continuous Class I vapor retarder. All joints of the vapor retarder shall overlap six inches and be sealed or taped. The edges of the vapor retarder shall extend at least six inches up the stem wall and shall be attached and sealed to the stem wall."

(h) remains the same but is renumbered (g).

(h) Subsection R402.4.1.3, Leakage Rate, is amended as follows: "When complying with Subsection R401.2.1, the building or dwelling unit shall have an air leakage rate not exceeding 4.0 air changes per hour in Climate Zone 6, when tested in accordance with Subsection R402.4.1.2."

(i) Subsection ~~R403.3.5~~ R403.3.7, Exception: Building framing cavities may be used for return ducts if there is no atmospherically vented furnace, boiler, or water heater located in the house outside of a sealed and insulated room that is isolated from inside the thermal envelope and if the duct system has been tested as having a maximum total leakage not greater than 4 cfm/SF. The room walls, floor, and ceilings shall be insulated in accordance with the basement wall requirements of Table ~~R402.1.2~~ R402.1.3. A duct air leakage test shall not be required where the ducts and air handlers are located entirely within the building thermal envelope.

~~(j) Subsection R403.4.2, Hot Water Pipe Insulation (Prescriptive), is amended as follows:~~

~~Delete item number 3, delete item number 9, delete Table R403.4.2 and the text, "All remaining piping shall be insulated to at least R-3 or meet the run length requirements of Table R403.4.2."~~

(j) Subsection R403.4, Mechanical System Piping Insulation, is deleted and replaced with "Mechanical system piping shall be insulated in accordance with subsections 610.11 and L 501.2 of the Uniform Plumbing Code (UPC) 2021 edition."

(k) Subsection R403.5, Service Hot Water Systems, is deleted and replaced with "Service hot water systems shall be insulated in accordance with subsection L 503.3.3 of the Uniform Plumbing Code (UPC) 2021 edition."

(l) Subsection R403.5.2, Hot Water Pipe Insulation, is deleted and replaced with "Hot water pipe insulation shall be insulated in accordance with subsections 610.11 and L 501.2 of the Uniform Plumbing Code (UPC) 2021 edition."

(m) Appendix CB, Solar-Ready Zone - Commercial. Appendix CB may be adopted by a certified city, county, or town building code jurisdiction. The department shall not apply or enforce Appendix CB.

(n) Appendix CC, Zero Energy Commercial Building Provisions. Appendix CC may be adopted by a certified city, county, or town building code jurisdiction. The department shall not apply or enforce Appendix CC.

~~(k)~~ (o) Appendix ~~RA~~ RB, Solar-Ready Provisions–Detached One- and Two-Family Dwellings and Townhouses. Appendix ~~RA~~ RB may be adopted by a certified city, county, or town building code jurisdiction. The department shall not apply or enforce Appendix ~~RA~~ RB.

(2) and (3) remain the same.

AUTH: 50-60-203, 50-60-803, MCA
IMP: 50-60-201, 50-60-203, 50-60-803, MCA

REASON: The department is striking old (1)(c) to remove a definition that is now closely defined in the new 2021 International Energy Conservation Code (IECC) edition. The department is eliminating the table previously in the renumbered section and instead providing the one existing amendment to provide easier reading. The table is exactly as produced in the 2021 IECC, with the exception.

It is necessary to amend (1)(h) to clarify that new subsection R402.4.1.3 of the 2021 IECC still uses the amended four air changes per hour.

The department is amending (1)(i) to encourage the installation of ducts and air handlers inside the thermal envelope to improve energy conservation. It is reasonably necessary to strike (1)(j) as the referenced subsection was removed from the 2021 IECC and is no longer relevant. The department is adding (1)(j), (k), and (l) to reflect that the Uniform Plumbing Code (UPC) is the code having authority over pipe insulation requirements. It is reasonable to add (1)(m) and (n) to allow local jurisdictions to adopt and enforce solar ready provisions and zero energy provisions for commercial buildings in their jurisdictions. The department is amending (1)(o) to reflect a renamed appendix in the 2021 IECC.

24.301.171 INCORPORATION BY REFERENCE OF INTERNATIONAL EXISTING BUILDING CODE (1) The department adopts and incorporates by reference the International Existing Building Code (IEBC), ~~2018~~ 2021 edition, which may be used as an alternate prescriptive method(s) for the remodel, repair, alteration, change of occupancy, addition, and relocation of existing building.

(a) through (4) remain the same.

AUTH: 50-60-203, MCA
IMP: 50-60-103, 50-60-201, 50-60-203, MCA

24.301.172 INCORPORATION BY REFERENCE OF INTERNATIONAL MECHANICAL CODE (1) The department adopts and incorporates by reference the International Mechanical Code, ~~2018~~ 2021 edition, published by the International Code Council, unless another edition is specifically stated, together with the following amendments:

(a) through (k) remain the same.

(2) The ~~Building and Commercial Measurements Bureau~~ department shall not enforce the IMC in buildings exempted from state building codes by 50-60-102, MCA. Cities, counties, and towns that have made the state building regulations applicable to buildings exempt from state enforcement, except for mines and buildings on mine property regulated under Title 82, chapter 4, MCA, may enforce within their jurisdictional areas the International Mechanical Code as adopted by those units of government.

(3) through (6) remain the same.

AUTH: 50-60-203, MCA
IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-203, 50-60-303, MCA

24.301.173 INCORPORATION BY REFERENCE OF INTERNATIONAL FUEL GAS CODE (1) The department adopts and incorporates by reference the International Fuel Gas Code, ~~2018~~ 2021 edition, published by the International Code Council, IFGC, unless another edition is specifically stated, together with the following amendments:

(a) through (f) remain the same.

(2) The ~~Building and Commercial Measurements Bureau~~ department shall not enforce the IFGC on those buildings exempted from state building codes by 50-60-102, MCA. Cities, counties, and towns that have made the state building regulations applicable to buildings exempt from state enforcement, except for mines and buildings on mine property regulated under Title 82, chapter 4, MCA, may enforce within their jurisdictional areas the International Fuel Gas Code as adopted by those units of government.

(3) through (6) remain the same.

AUTH: 50-60-203, MCA
IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-203, 50-60-303, MCA

24.301.175 INCORPORATION BY REFERENCE OF INTERNATIONAL SWIMMING POOL AND SPA CODE (ISPSC) (1) The department adopts and incorporates by reference the International Swimming Pool and Spa Code, ~~2018~~ 2021 edition, published by the International Code Council, unless another edition is specifically stated, together with the following amendments:

(a) through (6) remain the same.

AUTH: 50-60-203, MCA
IMP: 50-53-103, 50-60-104, 50-60-202, 50-60-203, 76-2-412, MCA

24.301.181 INCORPORATION BY REFERENCE OF INTERNATIONAL WILDLAND-URBAN INTERFACE CODE (IWUIC) (1) The department adopts and incorporates by reference the International Wildland-Urban Interface Code, ~~2018~~ 2021 edition, published by the International Code Council, unless another edition is specifically stated, together with Appendix "B" (Vegetation Management Plan) and Appendix "C" (Fire Hazard Severity Form).

(2) through (24) remain the same.

AUTH: ~~50-60-202,~~ 50-60-203, MCA
IMP: 50-60-201, 50-60-202, 50-60-203, MCA

REASON: Authority citations are being amended to provide the complete sources of the department's rulemaking authority.

24.301.201 EXTENT OF LOCAL PROGRAMS (1) A city, county, or town, as provided by 50-60-102, MCA, may adopt codes that have been adopted by the department to cover buildings within their respective ~~jurisdictional areas~~ jurisdiction. However, as provided by 50-60-102, MCA, a city, county, or town may not cover residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building and any private garage or private storage structure used only for the owner's own use unless the local legislative body or board of county commissioners by ordinance or resolution makes the building code specifically applicable to those structures. A city, county, or town may accomplish this by making its building codes applicable to nonexempt building construction within the respective jurisdiction.

(2) When a city, county, or town is approved to enforce building, mechanical, electrical, ~~or~~ plumbing, fuel gas, swimming pool and spa, medical gas, and/or wildland-urban interface codes for limited types of buildings, the ~~Department of Labor and Industry, Building and Commercial Measurements Bureau~~ department retains authority to enforce building, mechanical, electrical, ~~and~~ plumbing, fuel gas, swimming pool and spa, medical gas, and/or wildland-urban interface codes for all other buildings not covered by the city, county, or town and which are not exempt from department regulation.

(3) The International Building Code includes the A117.1 Accessibility Code, the International Energy Conservation Code, the International Swimming Pool and Spa Code, and the International Existing Building Code.

(4) The International Residential Code includes the International Energy Conservation Code.

AUTH: 50-60-203, 50-60-302, 50-60-504, 50-60-603, MCA
IMP: 50-60-202, 50-60-203, 50-60-301, 50-60-302, 50-60-504, 50-60-603, MCA

REASON: The department determined it is reasonably necessary to amend this rule to address ongoing confusion and a recent challenge by local building codes jurisdictions. The amendments will clarify which codes require formal adoption and certification and which codes are ancillary and included in a local jurisdiction's adoption.

24.301.202 ADOPTION OF CODES (1) The codes adopted by cities, counties, and towns must be the same as those adopted by the department. However, cities, counties, or towns ~~need~~ shall only adopt those codes~~, which~~ that they are certified to enforce~~; that is~~, which include plumbing, electrical, building, ~~or~~ mechanical, medical gas, or the International Wildland-Urban Interface Code. The codes adopted by cities, counties, and towns must be the same edition with the same amendments as those adopted by the department. Each time the department modifies the codes, cities, counties, and towns must modify their codes to conform to the department's codes. The department will notify cities, counties, and towns of these code modifications, at which time they will have 90 days from receipt of the notice to conform their codes. Cities, counties, and towns shall notify the department in writing when the updated codes have been adopted and are being enforced. Such notification shall include a copy of the appropriate code adoption ordinance(s) or administrative action.

(2) An ordinance authorizing the adoption of a building code by administrative action must state, at a minimum:

(a) the type of codes which will be enforced, i.e., plumbing, electrical, building, ~~or~~ mechanical, medical gas, or the International Wildland-Urban Interface Code; and

(b) through (4) remain the same.

AUTH: 50-60-302, MCA
IMP: 50-60-301, 50-60-302, MCA

REASON: The department has found that certified jurisdictions have adopted unnecessary codes beyond the codes they are certified to enforce. It is reasonably necessary to amend the language by changing "need only" to "shall" and clarify that only enforced codes should be adopted. The department is further amending the rule by adding additional codes to set forth a complete list for reference of all codes a jurisdiction could adopt.

24.301.204 FACTORY-BUILT BUILDINGS (1) Once factory-built buildings are approved by the ~~bureau~~ department as meeting the codes, the units shall be subject only to city, county, or town inspection and fees for zoning, utility connections and foundations. As part of the city, county or town's submittals to the ~~bureau~~ department, provisions must be included stating how factory-built buildings will be handled with respect to permits and inspections to include the charges for permits covering these types of units.

AUTH: 50-60-302, MCA

IMP: 50-60-302, MCA

24.301.205 CERTIFICATION OF CODE ENFORCEMENT PROGRAMS

(1) A city, county, or town shall submit ~~the equivalent of an annual~~ a program report, including all items listed in ARM 24.301.207(2)(a) to support a request for certification of a new code enforcement program. Certification of the proposed code enforcement program shall be effective upon the department's written determination that the city, county, or town's proposal would be ~~in compliance~~ compliant with applicable statutes and rules.

AUTH: 50-60-203, 50-60-302, MCA
IMP: 50-60-302, MCA

REASON: It is reasonably necessary to amend this rule to align with changes proposed in ARM 24.301.207 and specify the location of the required program report information.

24.301.206 STAFF QUALIFICATION (1) City, county, or town plumbing ~~and electrical~~ inspectors must be ~~either~~ Montana licensed journeymen or master plumbers, or inspector certified in ~~the craft being inspected~~ plumbing.

(2) City, county, or town electrical inspectors must be Montana licensed journeyman or master electricians, or inspector certified in electrical.

(2) remains the same but is renumbered (3).

~~(3)~~ (4) Plans examiners must be either plans examiner certified, or be building inspector qualified as allowed in ~~(2)~~ (3).

(4) remains the same but is renumbered (5).

~~(5)~~ (6) Plumbing, electrical, mechanical, or building inspector certification may be obtained as part of a combination inspector certification to the extent the individual inspector certifications meet the requirements of ~~(4)~~ (5).

~~(6)~~ (7) The types of buildings ~~which~~ that may be inspected or plans examined by ~~a particular~~ any certification classification shall be determined by the department utilizing the standards and recommendations of the entity administering the certification program. However, ~~as a general rule,~~ residential building inspector certification shall be acceptable for inspections of residential buildings containing less than five dwelling units.

(7) and (8) remain the same but are renumbered (8) and (9).

AUTH: 50-60-203, 50-60-302, MCA
IMP: 50-60-302, MCA

REASON: Certified jurisdictions have been confused by this rule due to qualifications for more than one discipline being listed in one sentence. It is reasonably necessary to separate the required qualification for each discipline to eliminate confusion over which certification is required. Some of the codes adopted by the department do not require a separate certification as they are addressed in the building code but referenced in a separate code book. The certification for

commercial and/or residential building inspector certification covers the codes listed in ARM 24.301.201(3) and (4).

24.301.207 ~~ANNUAL REPORT~~ REPORTING REQUIREMENTS (1) A city, county, or town with a certified code enforcement program ~~may submit~~ shall report to the ~~Department of Labor and Industry an annual report~~ department changes to its code enforcement program within 30 days of the change. Changes to inspection staff or inspection staff qualifications must be reported within ten days with proof of certification. ~~The department may request a city, county, or town with a certified code enforcement program which has not filed an annual report in accordance with this rule to respond to inquiries regarding its code enforcement program so the department can ensure program functions are being properly performed as required by 50-60-302(2), MCA. The department may also make similar inquiries to clarify or further examine details provided in annual reports.~~

(2) ~~The voluntary annual report should be filed~~ All certified jurisdictions, whether or not the program has changes to report, must file a report with the department on or before September 1~~st of each year~~ at least every three years for the immediately preceding fiscal year. Information provided in ~~annual reports~~ the report should correspond directly to each item listed in (3)~~(a) through (k)~~, and each item should be answered and ~~tabbed~~ presented separately from all other ~~annual~~ report information. ~~The bureau will make an annual report example~~ An example report format is available to all Montana cities, counties, and towns ~~prior to September 1, 2004~~ upon request.

~~(3)~~ (a) ~~Except as provided in (4), the annual report should contain~~ The report must contain all of the following information ~~if there is a change in particular item of information as it was reported for the previous year~~:

(a) through (h) remain the same but are renumbered (i) through (viii).

~~(i)~~ (ix) the current plan for enforcement, which must include:

(i) through (v) remain the same but are renumbered (A) through (E).

~~(j)~~ (x) a list of employees inspecting, reviewing plans, or approving any installation with descriptions of responsibilities and proof of qualifications ~~of~~ for each employee as provided in ARM 24.301.206; and

~~(k)~~ (xi) if any services relating to building code enforcement are provided through contractual arrangements, a current copy of ~~any and~~ all such contracts.

~~(4) Beginning on September 1, 2004, and continuing thereafter on a three year rotating basis, cities, counties and towns shall submit annual reports which provide detailed answers to each of the criteria listed in (3), even if there has been no change since the previous reporting period, as follows:~~

~~(a) beginning in September 2004, cities, counties and towns whose names begin with the letters A through H;~~

~~(b) beginning in September 2005, cities, counties, and towns whose names begin with the letters I through P; and~~

~~(c) beginning in September 2006, cities, counties, and towns whose names begin with the letters Q through Z.~~

(3) By January 31 of each year, the department shall notify each city, county, and town expected to file its report on September 1.

(4) The department may request a city, county, or town with a certified code enforcement program to provide a report to the department in accordance with this rule to respond to inquiries regarding its code enforcement program so the department can ensure program functions are being properly performed as required by 50-60-302(2), MCA. The department may also make similar inquiries to clarify or further examine details provided in reports.

AUTH: 50-60-203, 50-60-302, MCA
IMP: 50-60-302, MCA

REASON: The department is amending this rule to eliminate the voluntary annual reporting by certified jurisdictions to better ensure the department is informed and aware of changes to local programs. Instead, the department will require that jurisdictions timely report any changes in the program's information. Additionally, every jurisdiction, whether having changes or not, will be required to file a report every three years that includes the information specified in (2)(a). These changes will help ensure the department has consistent access to all jurisdictions' current information.

It is reasonable to amend (4) to eliminate references to invalid past dates, since each January, the department will notify the jurisdictions required to report that year. The department is shifting language from (1) to (4) for better readability.

24.301.208 INCORPORATION BY REFERENCE OF INDEPENDENT ACCOUNTANT'S ~~REPORTING FORMAT FOR~~ REPORT ON APPLYING AGREED-UPON PROCEDURES ~~DURING AUDITS OF~~ FOR CERTIFIED ~~CITY, COUNTY, OR TOWN BUILDING CODE ENFORCEMENT PROGRAMS~~ LOCAL GOVERNMENTS

(1) The ~~Department of Labor and Industry~~ department adopts and incorporates by reference a document dated July 17, 2020, and entitled: "Independent Accountant's ~~Reporting Format for~~ Report on Applying Agreed-Upon Procedures ~~During Audits of~~ for Certified Local Governments ~~City, County, or Town Building Code Enforcement Programs, 2006 Edition~~."

(2) remains the same.

(3) A city, county, or town with a certified building code enforcement program that had a building code program reserve fund balance in the preceding fiscal year in excess of $10,000 and had building permit revenues in the previous fiscal year of more than $10,000 shall require its independent auditor, in conjunction with the audit required by 2-7-503, MCA, to perform agreed-upon procedures to determine whether the city, county, or town has complied with the financial related statutes and administrative rules relating to city, county, or town building code enforcement programs. The department may require cities, counties, and towns with certified building code enforcement programs which do not meet the above criteria to provide such an audit on a case-by-case basis so the department can ensure program functions are being properly performed as required by 50-60-302, MCA. The agreed-upon procedures engagement must be performed and reported in accordance with standards prescribed by the American Institute of Certified Public Accountants. The engagement must include but is not limited to procedures necessary to provide the information necessary to fully and accurately satisfy the

reporting format adopted by reference in (1), as provided for in 50-60-106, MCA, and ARM 24.301.203. Use of this reporting format ~~will become~~ is mandatory ~~beginning on July 1, 2007, and will apply to any independent agreed-upon procedures audit performed after that date~~.

(4) A copy of the document identified in (1) may be obtained from the Department of Labor and Industry, Building and Commercial Measurements Bureau, P.O. Box 200517, 301 South Park, Helena, MT 59620-0517. Copies may also be obtained by ~~facsimile request sent to Certified City Program at (406) 841-2050, by~~ e-mail request sent to buildingcodes@mt.gov, or by downloading the document from the department's web site at www.buildingcodes.mt.gov.

(5) and (6) remain the same.

AUTH: 50-60-203, 50-60-302, MCA
IMP: 50-60-302, MCA

REASON: The department is amending this rule to accurately reflect the name of the incorporated and updated document addressing agreed-upon procedures. It is reasonably necessary to strike unneeded past date references from (3) and update the information on how to obtain a copy of the document.

24.301.210 DECERTIFICATION OF CODE ENFORCEMENT PROGRAMS

(1) If the ~~Department of Labor and Industry~~ department determines a city, county, or town code enforcement program is not in compliance with the applicable statutes or rules it shall give the city, county, or town notice of such noncompliance and may allow a reasonable amount of time, not to exceed six months, for the city, county, or town to come into compliance or have the noncompliant code enforcement program decertified.

(a) through (3) remain the same.

AUTH: 50-60-203, 50-60-302, MCA
IMP: 50-60-302, MCA

24.301.212 CODE INTERPRETATIONS (1) through (4) remain the same.

(5) Code interpretations, which receive a "concur" status as established in (4), shall ~~be certified by signature of the Building Codes Bureau chief as having met the established procedures and the code interpretation will~~ be dated, chronologically numbered, placed in the department's central registry, and distributed to the requestor, Building Codes Council, and all city, county, and town code enforcement programs, which are then certified for building code enforcement.

AUTH: 50-60-203, MCA
IMP: 50-60-103, 50-60-117, ~~50-60-203,~~ MCA

REASON: The department is updating this rule to reflect the current process used when a code interpretation is concurred upon, which no longer requires a signature for "certification." Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.301.213 CODE TECHNICAL ADVISORIES (1) Code technical advisories are available for questions concerning any of the state building related codes (building, plumbing, mechanical, electrical, boiler and elevator) and may be requested by an affected party (building official, contractor, designer, owner, etc.), in writing, on forms provided by the department. The department may research and investigate the question and may prepare a preliminary written response, which includes the department's interpretation and justification as soon as possible. The affected party and the Building Codes Advisory Council will be provided with the preliminary written response and will be given five working days to submit comments. ~~After review of any comments the department will prepare a final written response, under signature of the Building Codes Bureau chief.~~

(2) remains the same.

(3) After review of any comments, the department will prepare a final written response and the code technical advisories ~~will~~ shall be dated, chronologically numbered, placed in the department's central registry and distributed to the requestor, Building Codes Council, and all certified city, county, and town building code enforcement programs.

AUTH: 50-60-203, MCA
IMP: 50-60-103, 50-60-117, ~~50-60-203,~~ MCA

REASON: Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.301.231 INTERGOVERNMENTAL JURISDICTIONAL RELATIONSHIPS RELATING TO BUILDING CODE ENFORCEMENT PROGRAMS (1) Only counties or incorporated cities and towns in Montana have the option of adopting their own code enforcement programs. A city, county, or town code enforcement program must be certified in accordance with ARM Title 24, chapter 301, subchapter 2 before the local government entity may begin enforcing building regulations. Where a county adopts such a program, the county must enforce the building regulations on a county-wide basis, except where an incorporated city or town already has a certified code enforcement program in place or where the city or town is later certified for operation of such programs. Cities, counties, and towns may enter into contracts for enforcement of building regulations within their respective jurisdictions, but those contracts must be submitted to the ~~Building Codes Bureau~~ department as part of an application for certification, or as an amendment to a previously approved plan before the contract may be performed.

(2) Specific alternative examples of code enforcement jurisdictional relationships and responsibilities are as follows:

(a) ~~As of October 1, 2003, in~~ In counties where no certified county code enforcement programs are in effect:

(i) the ~~Building Codes Bureau~~ department will ~~continue enforcing~~ enforce Montana's building regulations in all unincorporated cities and towns;

(ii) incorporated cities and towns which also do not have certified code enforcement programs in effect will ~~continue to~~ have Montana's building regulations enforced by the ~~Building Codes Bureau~~ department; and

(iii) incorporated cities and towns which do have a certified code enforcement program in effect will ~~continue to~~ operate that program and enforce Montana's building regulations within their jurisdiction. ~~However, where a program has provided permitting and inspection services outside the boundaries of cities and towns, those extended jurisdictional areas will be invalid as of October 1, 2003.~~

~~(A) The Building Codes Bureau will assume jurisdiction over all new and subsequent building projects in those areas on that date.~~

~~(B) Where incorporated cities and towns properly issued permits for building projects in areas outside their boundaries prior to October 1, 2003, the city or town will retain jurisdiction over those projects until that building project is completed.~~

~~(b) As of October 1, 2003, where an incorporated city or town exists in a county which has a certified building code enforcement program already in effect, but where the Building Codes Bureau has been providing permitting and inspection services to those cities and towns, those permitting and inspection services will become the responsibility of the certified county programs unless the city or town opts to have the Building Codes Bureau continue providing these services.~~

~~(c)~~ (b) ~~After October 1, 2003, any~~ A city or town~~, which becomes incorporated,~~ that incorporates can choose to:

(i) and (ii) remain the same.

(iii) have the ~~Building Codes Bureau~~ department provide permitting and inspection services inside the city limits in accordance with Montana statutes and administrative rules.

This rule is advisory only, but may be a correct interpretation of the law.

AUTH: 50-60-203, MCA

IMP: 50-60-103, 50-60-106, 50-60-117, 50-60-301, 50-60-302, MCA; Ch. 443, sec. 25, L. 2003

REASON: This advisory rule was adopted to address ongoing questions following 2003 legislative changes (House Bill 640) regarding localized enforcement of building regulations. The department is amending this rule as it is no longer necessary to retain past dates and outdated language describing the post-legislative transition.

24.301.301 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) The department adopts and incorporates by reference the Uniform Plumbing Code, ~~2018~~ 2021 edition, unless another edition is specifically stated, together with the following appendix chapters and amendments:

(a) and (b) remain the same.

(c) Appendix C, Alternate Plumbing Systems is adopted.

(c) remains the same but is renumbered (d).

(e) Appendix K, Potable Rainwater Catchment Systems is adopted.

(f) Appendix L, Sustainable Practices is adopted.

(g) Appendix M, Peak Water Demand Calculator is adopted.

(h) Appendix N, Impact of Water Temperature on the Potential for Scalding and Legionella Growth is adopted.

(d) and (e) remain the same but are renumbered (i) and (j).

~~(i) No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.~~

~~(ii) No permit is required where the installation is exempt under the provisions of 50-60-503 or 50-60-506, MCA.~~

~~(iii) The requirements for permits do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of these rules.~~

~~(iv) Factory-built buildings covered by an insignia issued by the department need not have a plumbing permit for the construction of the unit; however, a permit will still be required for on-site work, as provided for in these rules.~~

(f) through (h) remain the same but are renumbered (k) through (m).

~~(i) Subsection 507.13, paragraph one is amended to read as follows: "Gas utilization equipment, or any equipment that generates a glow, spark, or flame, in residential garages and in adjacent spaces that open to the garage and are not part of the living space for a dwelling unit shall be installed so that all burners, burner-ignition devices, and heating elements are located not less than 18 inches (450 mm) above the floor unless listed as flammable vapor ignition resistant."~~

(j) remains the same but is renumbered (n).

~~(k) Subsection 603.2, Approval of Devices or Assemblies, is amended to read as follows: "Before any device or assembly is installed for the prevention of backflow, it shall have first been approved by the authority having jurisdiction. Devices or assemblies shall be tested for conformity with recognized standards or other standards acceptable to the authority having jurisdiction, so long as those standards are consistent with the intent of this code. All devices or assemblies installed in a potable water supply system for protection against backflow shall be maintained in good working condition by the person or persons having control of such devices or assemblies. If found to be defective or inoperative, the device or assembly shall be repaired or replaced. No device or assembly shall be removed from use or relocated or other device or assembly substituted, without the approval of the authority having jurisdiction."~~

(l) remains the same but is renumbered (o).

~~(m) Subsection 603.5.12, Beverage Dispensers, delete the first sentence and replace with: "Potable water supply to carbonated beverage dispensers or coffee machines that may produce back pressure shall be protected by an air gap or a vented backflow preventer in accordance with ASSE 1022."~~

(n) and (o) remain the same but are renumbered (p) and (q).

~~(p) Subsection 609.11, Pipe Insulation, is deleted in its entirety.~~

(q) through (v) remain the same but are renumbered (r) through (w).

~~(w) Subsection 710.1, is amended to read as follows: "Where a fixture is installed on a floor level that is lower than the next upstream manhole cover of the public or private sewer serving such drainage piping may be protected from the backflow of sewage by installing an approved type backwater valve. Fixtures on floor levels above such elevation shall not discharge through the backwater valve."~~

(x) through (ag) remain the same.

(ah) Chapter 13, Health Care Facilities and Medical Gas and Vacuum Systems, is deleted except for Subsections 1301.0, 1302.0, and 1303.0, Health Care Facilities. In lieu of Chapter 13, except for the subsections not deleted, the ~~Department of Labor and Industry~~ department adopts and incorporates by reference the National Fire Protection Association's Standard NFPA 99, 2018 edition, Chapters 1 through 5 and Chapter 15 for the exclusive use as a standard for medical gas and vacuum systems, unless a different edition date is specifically stated, as the standard for the installation of medical gas and vacuum systems. The requirements of this rule shall not be construed as to replace or supersede any additional requirements for testing and certification of medical gas and vacuum systems, including independent third-party certification of systems, as may be applicable. NFPA 99 is a nationally recognized standard setting forth minimum standards and requirements for medical gas and vacuum systems. A copy of NFPA 99 may be obtained from the National Fire Protection Association at www.nfpa.org.

(2) remains the same.

AUTH: 50-60-203, 50-60-504, 50-60-508, MCA
IMP: 50-60-201, 50-60-203, 50-60-504, 50-60-508, MCA

REASON: The department is amending (1)(c) through (h) to add additional appendices of the 2021 edition for alternative methods of compliance.

It is reasonably necessary to strike (1)(j)(i) through (iv) as they unnecessarily restate statutory provisions of Title 50, chapter 60, part 5, MCA.

As required by 50-60-201(3), MCA, it is necessary to repeal obsolete rules that are now covered in the proposed adopted code version. The department is repealing old (1)(i), (k), (m), (p), and (w) as unnecessary since the provisions now mirror text in the UPC 2021.

24.301.351 MINIMUM REQUIRED PLUMBING FIXTURES (1) The following table will be used to determine the minimum number of plumbing fixtures to be installed in new buildings:

~~MINIMUM NUMBER OF PLUMBING FACILITIES[a, n, q]~~
~~Fixtures (Number of fixtures per number of occupants)~~

~~Occupancy or Use~~		~~Water Closets (Urinals see footnotes g & m)~~		~~Lavatories~~	~~Bathtubs/ Showers~~	~~Drinking Fountains[r]~~
		~~Male~~	~~Female~~			
~~ASSEMBLY~~	~~Theaters~~	~~1 per 125~~	~~1 per 65~~	~~1 per 2 water closets~~		~~1 per 1,000~~
	~~Nightclubs[g,h,p]~~	~~1 per 40~~	~~1 per 40~~			
	~~Restaurants[g,h,p]~~	~~1 per 75~~	~~1 per 75~~			
	~~Halls, museums, coliseums, arenas[e], stadiums, pools, etc.~~	~~1 per 125~~	~~1 per 75~~			~~1 per 1,000~~
	~~Churches[b]~~	~~1 per 150~~	~~1 per 75~~			~~1 per 1,000~~

	~~Business[i,j,l,p]~~	~~1 per 25~~	~~1 per 25~~			
	~~Educational Elementary~~	~~1 per 100~~	~~1 per 35~~	~~1 per 2 water closets~~		~~1 per floor~~
	~~Educational Secondary~~	~~1 per 100~~	~~1 per 45~~	~~1 per 2 water closets~~		~~1 per floor~~
	~~Factory and industrial~~	~~1 per 100~~	~~1 per 100~~	~~1 per 100~~		~~1 per 400~~
	~~High hazard~~	~~1 per 100~~	~~1 per 100~~	~~1 per 100~~		~~1 per 1,000~~
~~INSTITUTIONAL~~	~~Residential care~~	~~1 per 10~~	~~1 per 10~~	~~1 per 10~~	~~1 per 8~~	
	~~Hospitals, ambulatory nursing home patients[c]~~	~~1 per room~~		~~1 per room[e]~~	~~1 per 15~~	~~1 per 100~~
	~~Day nurseries[k], sanitariums, nonambulatory nursing home patients, etc.[c]~~	~~1 per 15~~	~~1 per 15~~	~~1 per 15~~	~~1 per 15[f]~~	~~1 per 100~~
	~~Employees, other than residential care[c]~~	~~1 per 25~~	~~1 per 25~~	~~1 per 35~~		~~1 per 100~~
	~~Visitors, other than residential care~~	~~1 per 75~~	~~1 per 75~~	~~1 per 100~~		~~1 per 500~~
	~~Prisons[c]~~	~~1 per cell~~		~~1 per cell~~	~~1 per 15~~	~~1 per 100~~
	~~Asylums, reformatories, etc.[c]~~	~~1 per 15~~	~~1 per 15~~	~~1 per 15~~	~~1 per 15~~	~~1 per 100~~
	~~Mercantile[i]~~	~~1 per 500~~	~~1 per 500~~	~~1 per 750~~		
~~RESIDENTIAL~~	~~Hotels, motels~~	~~1 per guestroom~~		~~1 per guestroom~~	~~1 per guestroom~~	
	~~Lodges~~	~~1 per 10~~	~~1 per 10~~	~~1 per 10~~	~~1 per 8~~	
	~~Multiple family~~	~~1 per dwelling unit~~		~~1 per dwelling unit~~	~~1 per dwelling unit~~	
	~~Dormitories~~	~~1 per 10~~	~~1 per 10~~	~~1 per 10~~	~~1 per 8~~	~~1 per 100~~
	~~One- and two-family dwelling[d]~~	~~1 per dwelling unit~~		~~1 per dwelling unit~~	~~1 per dwelling unit~~	

[replace with the following table]

Minimum Number of Required Plumbing Fixtures[a, i, j, l, m, n, o, p, q, r]

Classification	Description	Water Closets (Urinals - see fotenotes f, g & o)		Lavatories		Bathtubs/Showers	Drinking Fountains[s]	Other
		Male	Female	Male	Female			
Assembly	Theaters and other buildings for the performing arts and motion pictures[j]	1 per 125	1 per 65	1 per 200		-	1 per 500	1 service sink
	Nightclubs, bars, taverns, dance halls and buildings for similar purposes[f, g, h, j]	1 per 40	1 per 40	1 per 75		-	1 per 500	1 service sink
	Restaurants, banquet halls and food courts[f, g, h, j]	1 per 75	1 per 75	1 per 200		-	1 per 500	1 service sink
	Casino gaming areas	1 per 100 for the first 400 and 1 per 250 for the remainder exceeding 400	1 per 50 for the first 400 and 1 per 150 for the remainder exceeding 400	1 per 250 for the first 750 and 1 per 500 for the remainder exceeding 750		-	1 per 1000	1 service sink
	Auditoriums without permanent seating, art galleries, exhibition halls, museums, lecture halls, libraries, arcades and gymnasiums[j]	1 per 125	1 per 65	1 per 200		-	1 per 500	1 service sink
	Passenger terminals and transportation facilities[j]	1 per 500	1 per 500	1 per 750		-	1 per 1000	1 service sink
	Places of worship and other religious services[b, j]	1 per 150	1 per 75	1 per 200		-	1 per 1000	1 service sink
	Coliseums, arenas, skating rinks, pools and tennis courts for indoor sporting events and activities[l]	1 per 75 for the first 1500 and 1 per 120 for the remainder exceeding 1500	1 per 40 for the first 1520 and 1 per 60 for the remainder exceeding 1520	1 per 200	1 per 150	-	1 per 1000	1 service sink
	Stadiums, amusement parks, bleachers and grandstands for outdoor sporting events and activities[l]	1 per 75 for the first 1500 and 1 per 120 for the remainder exceeding 1500	1 per 40 for the first 1520 and 1 per 60 for the remainder exceeding 1520	1 per 200	1 per 150	-	1 per 1000	1 service sink
Business	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial, ambulatory care and similar uses[i, k, m, n, q]	1 per 25 for the first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for the first 80 and 1 per 80 for the remainder exceeding 80		-	1 per 100	1 service sink[k]
Educational	Educational Facilities	1 per 50		1 per 50		-	1 per 100	1 service sink
Factory and Industrial	Structures in which occupants are engaged in work fabricating, assembly or processing of products or materials[i]	1 per 100		1 per 100		-	1 per 400	1 service sink
Institutional	Custodial care facilities	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
	Medical care recipients in hospitals and nursing homes[c]	1 per room[d]		1 per room[d]		1 per 15	1 per 100	1 service sink
	Employees in hospitals and nursing homes[c]	1 per 25		1 per 35		-	1 per 100	-
	Visitors in hospitals and nursing homes	1 per 75		1 per 100		-	1 per 500	-
	Prisons[c]	1 per cell		1 per cell		1 per 15	1 per 100	1 service sink
	Reformatories, detention centers and correctional centers[c]	1 per 15		1 per 15		1 per 15	1 per 100	1 service sink
	Employees in reformatories, detention centers and correctional centers[c]	1 per 25		1 per 35		-	1 per 100	-
	Adult day care and child day care	1 per 15		1 per 15		1 per 15[e]	1 per 100	1 service sink
Mercantile	Retail stores, service stations, shops, sales-rooms, markets and shopping centers[i, k, m, n, q]	1 per 500		1 per 750		-	1 per 1000	1 service sink[k]
Residential	Hotels, motels, boarding houses (transient)	1 per sleeping unit		1 per sleeping unit		1 per sleeping unit	-	1 service sink
	Dormitories, fraternities, sororities andboarding houses (not transient)	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
	Apartment house	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit	-	1 kitchen sink per dwelling unit; 1 automatic clothes washer connection per 20 dwelling units
	One- and two-family dwellings and lodging houses with five or fewer guestrooms	1 per dwelling unit		1 per 10		1 per dwelling unit	-	1 kitchen sink per dwelling unit; 1 automatic clothes washer connection per dwelling unit
	Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink

a. The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by the building code.

b. Fixtures located in adjacent buildings under the ownership or control of the church shall be made available during periods the church is occupied.

c. Toilet facilities for employees shall be separate from facilities of inmates or patients.

~~d. For attached one- and two-family dwellings, one automatic clothes washer connection shall be required per 20 dwelling units.~~

~~e~~ d. A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient rooms shall be permitted where such room is provided with direct access from each patient room and with provisions for privacy.

~~f~~ e. For day nurseries, a maximum of one bathtub shall be required.

~~g~~ f. Food service establishments or any establishment that sells alcoholic beverages for on-site consumption requires at least one urinal.

g. Single-user unisex facilities shall include a urinal in food service establishments or any establishment that sells alcoholic beverages for on-site consumption.

h. Contact the Department of Public Health and Human Services for additional requirements for food service establishments.

i. At the discretion of the building official, certain nonassembly buildings where food and beverages are not consumed on the premises, may be allowed to furnish only one unisex public toilet ~~provided it is designed for male and female use and it is suitable for use by handicapped persons~~ if it is accessible in accordance with ICC A117.1.

j. At the discretion of the building official, ~~for small (less than 1200 sq. ft. in floor area) convenience stores (typically gasoline sales plus convenience items and beverages) located to serve primarily neighborhood areas instead of major highways, only one public toilet is needed, provided it is designated for both male and female use and it is suitable for use by handicapped persons~~ business and mercantile classifications intended for quick transactions, including takeout, pickup, and drop off businesses having a floor area less than 1200 sq. ft., may utilize facilities located in another building within 500 feet provided the building is open and available during business hours and is accessible in accordance with ICC A117.1.

k. ~~If the total number of students plus staff exceeds 20, must provide separate male and female toilets.~~ For business and mercantile classifications with an occupant load of 15 or fewer, a service sink shall not be required.

l. Keyed toilets under employee control of the type available at service stations are permitted.

m. Where urinals are provided, notwithstanding the required urinal in footnote g. above, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced to less than one-half of the minimum specified.

n. ~~When calculating number of male and female occupants, the occupant load of the building shall be considered half male and half female, and the occupant load shall be calculated in accordance with the building code.~~ Where single-user unisex facilities are present, the aggregate fixture count shall be equal to the required number of separate facilities. Where single-user unisex toilet rooms or

bathing rooms are clustered at a single location, at least 50 percent but not less than one room for each user at each cluster shall be accessible.

o. Riding arenas as defined in ARM 24.301.146(11) are required to provide separate male and female accessible restrooms which contain a minimum of one water closet and one lavatory.

p. See ARM 24.301.903 for additional requirements and provisions concerning building accessibility.

q. If a specific occupancy is not shown in the table, the building official shall determine on an individual case-by-case basis the requirements for that occupancy.

r. On an individual case-by-case basis the building official may approve an alternative source of potable drinking water, such as, but not limited to, a bottled water cooler, in lieu of a drinking fountain.

AUTH: 50-60-203, 50-60-504, MCA
IMP: 50-60-203, 50-60-504, MCA

REASON: The department is amending this rule to replace the outdated plumbing fixture table with a current table located in the International Building Code 2021. This is necessary for uniformity and ease of design for compliant buildings.

It is reasonably necessary to repeal table footnote d as meaningless and unenforceable. Because the IBC defines "dwelling" to be buildings with one or two units, there will never be a case where a single or two-family dwelling would have 20 units.

The department is adding footnote g and amending i to address increased utilization of gender-neutral single-user toilet facilities in small businesses throughout Montana.

It is reasonably necessary to modify footnote j to clarify the options available for numerous types of small kiosks and dispensaries to use toilet facilities in a nearby building.

The department is striking footnote k to address the shift to gender-neutral single-user toilet facilities. The new provision is necessary to specify that no service sinks are necessary in small drive-through or kiosk type businesses where space is minimal or unavailable.

Footnote n is repealed and replaced to clarify that gender-neutral toilet facilities still must provide minimum facilities and accommodate accessibility needs.

24.301.371 PLUMBING INSPECTIONS (1) ~~When the permit holder is ready for inspection, he shall notify the department either orally or in writing. The notification shall be given not less than 24 hours before the work is to be inspected. To assist the department with its scheduling of inspections, it is asked that inspection requests be made as much in advance of the 24-hour minimum notice time as possible.~~ Cover (rough-in) inspections are made by a state plumbing inspector wherever possible. Insulation and wallboard shall not be applied prior to inspection unless 48 hours, excluding Saturdays, Sundays, and holidays, have expired after the plumbing installation is complete and notice to inspect has been received.

(2) through (4) remain the same.

(5) Plumbing inspectors shall not inspect any plumbing work in which they have any financial or personal interest, or which they have installed or repaired.

AUTH: 50-60-203, 50-60-504, MCA
IMP: 50-60-510, 50-60-511, MCA

REASON: The department determined it is reasonably necessary to modify this rule to align plumbing inspection regulations with the current electrical inspection requirements in ARM 24.301.441. Because the department primarily utilizes combination inspectors who conduct both electrical and plumbing inspections, this consistency will help costs savings with standardized timelines and processes. The addition of (5) further clarifies that if an inspector also contracts on off hours, they are prohibited from inspecting any work that could be a potential conflict of interest. This prohibition is already contained in the current rules applicable to electrical inspections.

24.301.401 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL CODE (1) The department adopts and incorporates by reference the National Fire Protection Association Standard NFPA 70, National Electrical Code, ~~2017~~ 2020 edition referred to as the National Electrical Code, unless another edition date is specifically stated. The National Electrical Code is a nationally recognized model code setting forth minimum standards and requirements for electrical installations.

~~(2) Subsection 210.12, Arc-Fault Circuit-Interrupter Protection, is amended to delete all references to "kitchen" or "kitchens."~~

(3) remains the same but is renumbered (2).

AUTH: 50-60-203, 50-60-603, MCA
IMP: 50-60-201, 50-60-203, 50-60-601, 50-60-603, MCA

REASON: With adoption of the most current edition of the NEC, it is reasonably necessary to strike (2) as no longer necessary.

24.301.411 WIRING STANDARDS (1) through (1)(c) remain the same.

(d) NEC Article 760.1 (SUPPLEMENTARY). Smoke alarms and carbon monoxide alarms shall be installed in any building or structure as required under the currently adopted International Building Code or International Residential Code, whichever applies, regardless of whether or not the building or structure is exempt by 50-60-102, MCA.

AUTH: 50-60-203, 50-60-603, MCA
IMP: 50-60-203, 50-60-603, MCA

REASON: The department is amending (1)(d) because the Building Codes Council voted to add carbon monoxide alarms to the required alarms as they provide added life safety protection at a very low increase in cost.

24.301.431 ELECTRICAL PERMIT (1) through (5) remain the same.

(6) An individual that energizes an electrical installation without first obtaining an electrical permit for that installation is guilty of a misdemeanor per 50-60-607, MCA. The ~~bureau~~ department may require a utility per 50-60-605, MCA, to not energize or to remove provisional power from the permittee's electrical system if the permittee connects new wiring to a new or existing power source, thereby causing the utility to energize the electrical installation without first receiving the required permit for the connection.

(7) through (12) remain the same.

AUTH: 50-60-203, 50-60-603, MCA
IMP: 50-60-201, 50-60-203, 50-60-603, 50-60-604, 50-60-605, MCA

24.301.451 FINAL INSPECTION (1) remains the same.

(2) Upon completing final inspections, state inspectors will date and sign the inspection reports. Inspectors will apply a green "approved" tag when installations have been inspected and approved by the department. ~~Inspectors will apply an orange "conditionally approved" tag to those installations that violate the cover inspection provision as provided in ARM 24.301.441.~~ Upon approval, the department will remove the provisional power designation.

(3) remains the same.

AUTH: 50-60-203, 50-60-603, MCA
IMP: 50-60-103, 50-60-201, 50-60-203, 50-60-603, 50-60-604, MCA

REASON: The department is amending this rule to remove the use of orange "conditionally approved" stickers. Historically, orange stickers were given when rough-in inspections were not requested and therefore not performed by state inspectors. Because there is no way to conduct a rough-in inspection once the insulation and wallboard are in place, there is no way to change an orange "conditional" approval to a final "green" status. It is reasonably necessary to cease the use of the orange sticker process as unnecessary and inefficient. This change will help to reduce roadblocks to cost-effective, timely building in Montana.

24.301.602 INCORPORATION BY REFERENCE OF ELEVATOR CODE

(1) Subject to the provisions of Title 50, chapter 60, part 7, MCA, the department adopts and incorporates by reference the following conveyance codes promulgated by the American Society of Mechanical Engineers (ASME):

(a) Safety Code for Elevators and Escalators, ASME A17.1 ~~2004~~, ~~A17.1a-2005 Addenda, and ASMEA17.1S-2005 Supplement~~ 2019 edition, excluding the following subsections: 2.13.5; 2.13.5.1; 2.13.5.2; 2.13.5.3; 2.13.5.3.1; 2.13.5.4; 2.13.5.4.1; 2.13.5.4.2; 2.13.5.5; 2.13.5.6; 2.27.1.1.3; 2.27.1.1.4; and 2.27.1.1.6;

(b) Safety Code for Existing Elevators and Escalators, ASME A17.3 ~~2002~~ 2018 edition; and

(c) Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1-~~2003; and~~ 2017 edition.

~~(d) ASME A17.1 2004, Appendix N, Table N1, Recommended Inspection and Test Intervals in Months, for required testing intervals. This table is to be used for testing interval requirements only. Inspection intervals are to be performed as specified in 50-60-711, MCA.~~

~~(i) Existing elevators with a capacity of 1400 pounds or less are to be tested according to the requirements of limited use/limited application elevators as specified in (1)(d).~~

(2) Inspection, code compliance, and enforcement of hoistway ~~shaft~~ enclosure standards are the responsibility of the appropriate authority having jurisdiction for inspection and enforcement of the building code. ~~A "hoistway shaft" is distinguished from a "hoistway" for the purposes of building code jurisdiction over the former, and elevator code jurisdiction over the latter.~~ The building code, as adopted in ARM 24.301.131, shall have jurisdiction over the structural integrity of the hoistway enclosure, and the elevator code, as defined in (3), shall have jurisdiction over the hoistway shaft.

(3) The codes~~, standard, and appendix~~ and standard referenced in (1), together with Title 50, chapter 60, part 7, MCA, and this subchapter, are collectively referred to as the "elevator code." A copy of the ASME codes and standards may be obtained from the American Society of Mechanical Engineers, P.O. Box 2300, Fairfield, NJ 07007-2300, or www.asme.org.

AUTH: 50-60-705, 50-60-715, MCA
IMP: 50-60-704, 50-60-705, 50-60-715, MCA

REASON: The currently adopted versions of the ASME elevator codes are outdated and do not address modern elevator equipment currently being manufactured and installed. The department is amending (1)(a) to exclude certain ASME sections that address technology not available in all geographical areas of Montana, and therefore is excluded from the adopted version of the building and elevator codes. It is necessary to amend (2) to address questions by clarifying the portions of an elevator installation that are the jurisdiction of the adopted building code versus the jurisdiction of the adopted elevator code.

24.301.603 DEFINITIONS (1) and (2) remain the same.

(3) "Hoistway enclosure" means the fixed structure of vertical walls or partitions, that isolates the hoistway from other areas or from an adjacent hoistway and in which entrances are installed.

(4) "Hoistway shaft" means an opening through a building or structure for the travel of an elevator, dumbwaiter, or material lift, extending from the pit floor to the roof, or the floor above.

(3) and (4) remain the same but are renumbered (5) and (6).

AUTH: 50-60-203, 50-60-705, 50-60-715, MCA
IMP: 37-73-201, 37-73-203, 37-73-208, 37-73-212, 50-60-704, 50-60-705, 50-60-715, MCA

REASON: It is reasonably necessary to amend this rule to clarify jurisdictional boundaries of the building code versus the elevator code by defining terms found in both codes. The department discovered that some certified cities either enforce or waive elevator requirements but lack the authority to do so. These definitions will address any misconceptions in jurisdiction by helping to clarify that the State of Montana has the authority over elevators and hoistways even in cities with certified building programs.

24.301.606 PLAN REVIEW AND PERMIT FEE (1) through (4)(a) remain the same.

(b) If upon the requested arrival of department personnel, the conveyance is not ready for inspection, the permit holder ~~will still~~ shall be responsible for the inspection fee despite the inability to complete the inspection, and will ~~also~~ be ~~charged~~ responsible for all subsequent inspections ~~or reinspections~~.

(5) and (6) remain the same.

AUTH: 50-60-705, 50-60-709, MCA
IMP: 50-60-105, 50-60-709, 50-60-711, MCA

REASON: It is necessary to remove the reference to reinspections to align with the removal of reinspection fees from ARM 24.301.607 in this proposal.

24.301.607 INSPECTIONS–CERTIFICATES–FEES (1) through (4) remain the same.

(5) The department may require correction of deficiencies ~~and reinspection,~~ prior to the next annual inspection, as it determines in the interest of public safety.

(6) and (7) remain the same.

(8) The fee for each separate department of inspection (annual, biennial, or accident~~, or reinspection~~) is:

(a) through (d) remain the same.

(e) initial inspection for elevator, escalator, or moving walk ~~$300~~ 140 per conveyance plus $50 per stop

~~(f) reinspection of initial inspection $300 per conveyance plus $50 per stop~~

(9) remains the same.

AUTH: 50-60-705, 50-60-711, MCA
IMP: 50-60-103, 50-60-705, 50-60-706, 50-60-711, 50-60-715, MCA

REASON: The department determined it is reasonably necessary to amend this rule to decrease fees. The Building Codes Program does not charge for reinspection for any other inspection type and is proposing to eliminate this fee for consistent management of all programs' inspections. The fee for initial inspection of an elevator, escalator, or moving walk is being decreased to be the same as an annual, biannual, or accident inspection as the cost to conduct an inspection is consistent regardless of inspection type. Fees must be commensurate with the cost of

services, and it is necessary at this time to reduce the accumulation of fees to meet that obligation.

Further, it is reasonably necessary to reduce fees to comply with 17-2-302 and 17-2-303, MCA, by not allowing the Building Codes Program (program) cash balance to exceed twice the annual appropriation amount. Reducing the fees will gradually decrease the cash balance to meet the statutory requirements while ensuring adequate revenue to support program activities through the next biennium. The department estimates the fee reductions will affect approximately 1,100 firm bidders and design professionals and inspection applicants for elevators, escalators, and moving walks, and result in a $1,582,646.50 reduction in annual revenue.

5. The department proposes to repeal the following rule:

24.301.209 SPECIAL REPORTS

AUTH: 50-60-302, MCA
IMP: 50-60-106, 50-60-302, MCA

REASON: It is reasonably necessary to repeal this rule as all reporting requirements are being relocated to ARM 24.301.207 in this notice to keep all reporting provisions in one location for ease of use by certified jurisdictions.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Building Codes Program, 301 South Park Avenue, P.O. Box 200517, Helena, Montana 59620-0517, by facsimile to (406) 841-2050, or e-mail to buildingcodes@mt.gov, and must be received no later than 5:00 p.m., May 13, 2022.

7. An electronic copy of this notice of public hearing is available at https://buildingcodes.mt.gov (department and program's website). Although the department strives to keep its websites accessible at all times, concerned persons should be aware that websites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a website do not excuse late submission of comments.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Building Codes Program administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Building Codes Program, 301 South Park Avenue, P.O. Box 200517, Helena, Montana 59620-0517; faxed to the office at (406) 841-2050; e-mailed to buildingcodes@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Regarding the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-stated rules will not significantly and directly impact small businesses.

Documentation of the department's above-stated determination is available upon request to the Building Codes Program, 301 South Park Avenue, P.O. Box 200517, Helena, Montana 59620-0517; telephone (406) 841-2016; facsimile (406) 841-2050; or to buildingcodes@mt.gov.

11. Department staff has been designated to preside over and conduct this hearing.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 5, 2022.

BEFORE THE BOARD OF WATER WELL CONTRACTORS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.21.415 and 36.21.661 and the repeal of ARM 36.21.413 pertaining to water well licensing and construction standards	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On May 17, 2022, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Montana Room, First Floor, located at 1539 Eleventh Avenue, Helena, Montana, and via Zoom, to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting: https://mt-gov.zoom.us/j/87252984527?pwd=T0V1L1BrdHkvMVhMOGd2alAwMUM3dz09; Meeting ID: 872 5298 4527, Password: 719374

b. Dial by Telephone: +1 646 558 8656 or +1 406 444 9999; Meeting ID: 872 5298 4527, Password: 719374

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than May 6, 2022, to advise us of the nature of the accommodation that you need. Please contact Jamie Price, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, 406-444-6615, or e-mail jsprice@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

<u>36.21.415 FEE SCHEDULE</u>

(1) Application and examination	
(a) Contractors	~~$375~~ <u>575</u>
(b) Drillers	~~$275~~ <u>475</u>
(c) Monitoring well constructor	~~$375~~ <u>575</u>
(2) Re-examination	
(a) Water well contractor	$175
(b) Water well driller	$150
(c) Monitoring well constructor	$175
(3) Renewal	
(a) Contractor	~~$375~~ <u>575</u>

(b) Driller $~~275~~ 475
(c) Monitoring well constructor $~~375~~ 575
(d) Monitoring well constructor/water well driller $~~375~~ 575
(e) Renewal - inactive (all licenses) $250
~~(f) Apprentice water well driller registration $50~~
~~(g) The apprentice water well driller registration fee is transferable and may be credited to a driller's license application fee for the year it is paid.~~
(4) Late renewal $150
(a) In addition to the renewal fee, a fee will be charged for any license not renewed prior to July 10.
(5) Duplicate license $50
(6) Copies of law and rules--per book $~~5~~ 10
(a) Licensed drillers ~~Drillers~~ and contractors are exempt from the fee.
(7) Exemption permits $100
(8) Construction standard variance inspection/follow-up $100

AUTH: 37-43-202, MCA
IMP: 37-43-202, 37-43-303, 37-43-305, 37-43-307, MCA

REASON: The Board of Water Well Contractors is required by 37-43-202, MCA, to set fees commensurate with the board's costs. The board evaluated program costs and revenues in January 2022 and determined a fee increase is necessary to pay program costs. The fee increase will affect 220 license holders and will increase annual revenue by $44,000. The board also determined the fee for apprentice water well driller registration should be removed because the fees collected are not used for a clearly defined purpose and do not provide a direct benefit to apprentice water well drillers. Finally, the board is increasing the price of copies of law and rule books due to increased printing and mailing costs.

36.21.661 ~~TEMPORARY~~ CAPPING (1) At all times during the progress of the work, the ~~contractor~~ well driller shall protect the well in such a manner as to effectively prevent either tampering with the well or the entrance of foreign matter into it. Upon its completion, ~~he~~ the well driller shall provide and set a ~~substantial screwed, flanged~~ sanitary well cap or welded cap.

(2) Any well to be temporarily removed from service, temporarily abandoned due to a recess in construction, or any well to be temporarily abandoned before commencing service, shall be capped with a sanitary well cap, watertight seal, watertight welded steel cap, or threaded cap. ~~In all cases, caps shall be of steel or cast iron of at least three-sixteenths of an inch in thickness.~~

(3) and (4) remain the same.

(5) Hydrants, frost-free hydrants, faucets, hose attachments, or discharge hardware that allow siphoning into a well cannot be directly attached to the well casing, pitless adapter, or well cap. Hand pumps, windmills, or other manually operated discharge hardware that have hose connections or attachments and that attach directly to the well casing shall use a vacuum breaker or an anti-siphoning device. Flowing wells shall be capped and sealed to comply with ARM 36.21.658.

AUTH: 37-43-202~~(3)~~, MCA
IMP: 37-43-202~~(3)~~, MCA

REASON: The board is required by 37-43-202(4), MCA, to adopt minimum standards designed to protect the state's ground water resource from degradation by contamination. The board has determined the word "temporary" should be removed, so that the protective effect of this regulation applies to both temporary capping that occurs if a driller must temporarily leave the well before it is finished, and also to capping the well once it is finished. The use of a sanitary well cap seals the well from insects, rodents, and other living creatures that may compromise water quality, and is an industry best practice. Restricting the placement of frost-free hydrants, faucets, hose attachments, and other hardware that allows siphoning into a well eliminates the potential to pollute the aquifer from siphoning back into the well and aquifer. Requiring a vacuum breaker or other anti-siphoning device for hand pumps, windmills, or other manually operated discharge hardware that have hose connections or attach directly to the well casing protects ground water resources from siphoning while still allowing the hand-pumps that are commonly used at campgrounds and in agricultural situations.

4. The department proposes to repeal the following rule:

36.21.413 RENEWALS

AUTH: 37-43-202, MCA
IMP: 37-43-307, MCA

REASON: The board has determined that requiring gummed labels to be placed on drilling rigs does not provide benefits commensurate with the approximately $500.00 annual cost of providing such labels. Licensees now change drill rigs more often than they did when this rule was created, which increases the burden on both licensees and the board to provide labels. Additionally, subjecting licensees to penalties such as probation, suspension, or license revocation for failing to place a gummed label on a drilling rig is impractical. Finally, because gummed labels are designed to be placed on a window, the placement of stickers can limit vision by obstructing windows.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted in writing to: Martin Balukas, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, or e-mail at MBalukas@mt.gov, and must be received no later than 5:00 p.m. on May 17, 2022.

6. Martin Balukas, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will significantly and directly impact small businesses. Documentation of the above-stated determination is available upon request from the contact person in 2 above.

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

/s/ Cameron Boster
Cameron Boster
Rule Reviewer

Certified to the Secretary of State April 5, 2022.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to Montana Energy Impact Assistance Financing	)))	AMENDED NOTICE OF PROPOSED ADOPTION

TO: All Concerned Persons

1. On February 11, 2022, the Department of Public Service Regulation published MAR Notice No. 38-5-250 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 217 of the 2022 Montana Administrative Register, Issue Number 3.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the Department of Public Service Regulation no later than 5:00 p.m. on May 10, 2022, to advise us of the nature of the accommodation that you need. Please contact Tarin Slayton at the department by telephone at (406) 444-6170, by TDD/Montana Relay Service at 444-4212, or by e-mail at tarin.slayton@mt.gov.

3. After receiving public comment on its original rulemaking proposal, the Public Service Commission has decided to supplement its proposal with additional minimum filing requirements for financing order applications. Additionally, the commission has identified certain terms in its original rulemaking proposal that are ambiguous, which have been clarified with the changes described below.

4. The rule as proposed to be adopted is amended as follows, new matter underlined, deleted matter interlined:

NEW RULE I MONTANA ENERGY IMPACT ASSISTANCE FINANCING

(1) If an electric utility applies to the commission to approve a financing order pursuant to the Montana Energy Impact Assistance Act, the electric utility's application to the commission must describe how such financing satisfies or follows from a plan developed pursuant to 69-3-1201 et seq., MCA, and any responsive commission comments.

(2) An application for a Montana Energy Impact Assistance Act financing order must be consistent with the relevant statutory requirements in 69-3-1601 through 69-3-1623, MCA, and include the following minimum filing requirements:

(a) testimony and workpapers providing an estimated schedule for the retirement or replacement of the electric infrastructure or facilities subject to the application;

(b) testimony and workpapers specifying the electric infrastructure or facilities to be retired or replaced, and the effects of the proposed financing on the retirement or replacement, including a description and calculation of the applicable electric

infrastructure or facilities' contribution to the electric utility's ~~rate base~~ revenue requirement including operating expenses, taxes, depreciation, rate base, and the return on rate base, plus the effect on the electric utility's cost-tracking adjustment for electricity supply and the applicable reduction to rates ~~base~~ upon the inception of the collection of Montana energy impact assistance charges;

(c) testimony and workpapers describing the amount and terms of the proposed securitization, including the Montana energy impact assistance costs and financing costs associated with the retirement or replacement;

(d) testimony and workpapers describing the proposed methodology for allocating the revenue requirement for the Montana energy impact assistance charge among customer classes;

(e) testimony and workpapers describing the nonbypassable Montana energy impact assistance charge required to be paid by customers within the electric utility's service area for the recovery of the Montana energy impact assistance costs;

(f) testimony and workpapers estimating the net present value of electric utility customer savings expected to result if the financing order is issued using a net present value comparison between the costs to customers that are expected to result from the financing of the undepreciated balances of electric infrastructure or facilities with Montana energy impact assistance bonds and the costs that would result from the application of traditional electric utility financing mechanisms to the same undepreciated balances;

(g) testimony and workpapers demonstrating one or more alternative financing scenarios in addition to the preferred scenario contained in the application. The alternative scenarios shall include various bond lengths with sensitivity analyses of associated interest rates, and compare electric utility customer savings under each scenario;

(h) testimony and workpapers describing the proposed billing mechanism to collect the Montana energy impact assistance charges from the electric utility customers, including proposed tariff sheets;

(i) a copy of the proposed Montana energy impact assistance bonds;

(j) testimony and workpapers describing the proposed true up mechanism to adjust for any over/undercollections of Montana energy impact assistance charges;

(k) testimony and workpapers describing the proposed method to remove the applicable electric infrastructure or facilities from the electric utility's ~~rate base~~ revenue requirement, including rate base, upon the inception of the collection of Montana energy impact assistance charges; and

(l) if approval for the use of any remaining Montana energy impact assistance bond proceeds is not requested in the application, testimony providing a general description and timeframe of the electric utility's anticipated use of such proceeds in compliance with 69-3-1623, MCA.

(3) The commission may assess a penalty for violations of 69-3-1616, MCA. A penalty must be reasonable based on the facts and circumstances presented for each violation, including the amount in controversy, and be sufficient to deter future noncompliance. Penalty amounts must be determined after providing parties an opportunity to appear and be heard. Penalties must be in amounts authorized by 69-3-206(1), MCA, and recovered from electric utilities under the procedure required by 69-3-206(2), MCA.

AUTH: 69-3-1604, MCA
IMP: 69-3-1604, MCA

5. The statement of reasonable necessity is amended as follows, new matter underlined, deleted matter interlined:

The Public Service Commission (commission) proposes the rule to implement the Montana Energy Impact Assistance Act, which provides an alternative financing mechanism to address the retirement and replacement of electric infrastructure or facilities and to authorize the commission to review and approve one or more financing orders, if it deems approval appropriate and in the interest of ratepayers.

The commission proposes (1) to align Montana energy impact assistance financing with least-cost planning requirements to ensure financing orders are consistent with just and reasonable rates and prudent utility resource planning decisions.

The commission proposes (2) to align minimum filing requirements with those required by statute (69-3-1601 through 69-3-1623, MCA). To understand the effects of the proposed Montana energy impact assistance bond financing on the retirement or replacement of utility infrastructure and facilities, the commission requires information regarding the effect of bond financing on the utility's revenue requirement and supply cost tracking mechanisms, as described in (2)(b).

The commission proposes (3) to establish general guidelines, penalty amounts, and a procedure for the commission to determine and assess the administrative penalty provided in 69-3-1604, MCA. This proposal refers to 69-3-206, MCA, which provides penalty amounts and provides a statutory procedure for recovering those penalties.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Tarin Slayton, Department of Public Service Regulation, 1701 Prospect Ave, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service 444-4212; or e-mail tarin.slayton@mt.gov, and must be received no later than 5:00 p.m., May 13, 2022.

7. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

/s/ Lucas Hamilton
Lucas Hamilton
Rule Reviewer

/s/ James Brown
James Brown
President
Public Service Commission

Certified to the Secretary of State April 5, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.31.1101 pertaining to department processing and remittance of local-option marijuana excise tax collections to localities	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 9, 2022, at 1:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on April 22, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.31.1101 LOCAL-OPTION MARIJUANA EXCISE TAX; NOTIFICATION REQUIREMENTS OF A LOCALITY; AFFECTED DISPENSARY REPORTING AND TAX PAYMENT REQUIREMENTS (1) remains the same.

(2) A locality is required to notify the department of the adoption of a local-option marijuana excise tax at least 90 days prior to its effective date.

(a) ~~If the locality complies with this requirement, then an affected dispensary's reporting and payment requirement begins with the filing date associated with the end of the calendar quarter in which the tax became effective. As an example, if a locality's local-option marijuana excise tax is effective November 1, 2022, and the locality notified the department at least 90 days prior, then an affected dispensary's first reporting and payment obligation date is December 31, 2022.~~ A locality shall provide the department with a copy of the ballot initiative placed before the electorate which should, at a minimum, include the following:

(i) the applicable tax rate;

(ii) the marijuana products subject to the tax; and

(iii) the effective date for the tax.

(b) When fulfilling the notice requirement in (2)(a), a locality may transmit the ballot initiative information to the department by mail, generally accepted delivery service, or by email correspondence. The contact information for the department's

Miscellaneous Tax Unit, which processes local-option marijuana excise tax payments and remittance, can be found at the department's website at mtrevenue.gov.

(3) If the locality complies with the requirement in (2), then an affected dispensary's reporting and payment requirement begins with the filing date associated with the end of the calendar quarter in which the tax became effective. As an example, if a locality's local-option marijuana excise tax is effective November 1, 2022, and the locality notified the department at least 90 days prior, then an affected dispensary's first reporting and payment obligation date is December 31, 2022.

~~(b)~~ (4) If a locality fails to comply with ~~this~~ the requirement in (2), then an affected dispensary's reporting and payment requirement begins with the filing date associated with the end of the subsequent calendar quarter in which the tax became effective. As an example, if a locality's local-option marijuana excise tax is effective November 1, 2022, but the locality did not notify the department at least 90 days prior, then an affected dispensary's first reporting and payment obligation is March 30, 2023.

~~(3)~~ (5) How, or whether, a locality fulfills the notice requirement in (2) does not change an affected dispensary's obligation to collect a local-option marijuana excise tax from all purchasers as of the effective date of the tax.

(4) remains the same but is renumbered (6).

(7) The department will remit the local-option marijuana excise tax payments received to the county treasurer in accordance with the following schedule. If the date for remittance falls upon a Saturday, Sunday, or legal holiday, the department will remit the taxes on the next business day.

(a) on or before June 15 of each year for the calendar quarter ending March 31 of the current year;

(b) on or before September 15 of each year for the calendar quarter ending June 30 of the current year;

(c) on or before December 15 of each year for the calendar quarter ending September 30 of the current year; and

(d) on or before March 15 of each year for the calendar quarter ending December 31 of the previous year.

(5) through (12) remain the same but are renumbered (8) through (15).

AUTH: 15-1-201, 16-12-312, MCA
IMP: 15-64-104, 15-64-105, 15-64-106, 16-12-309, 16-12-310, 16-12-311, 16-12-312, 16-12-317, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.31.1101 to clarify the information a locality should provide the department, upon the passage of a local-option marijuana excise tax ballot initiative, to ensure the department's accurate and timely tax collection remittance. The department also proposes to amend the rule to provide these localities with the timeline for the department's remittance of local-option marijuana excise taxes to the county treasurer after dispensaries submit local-option marijuana excise tax payments to the department - currently due within 15 days of the end of a calendar quarter. After

analyzing its internal processes, available resources, and the length of time remitting other tax types, the department proposes a timeframe of 60 days from the close of the quarterly reporting period.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., May 16, 2022.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State April 5, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.4.1202 and 42.26.101 and the repeal of ARM 42.4.121, 42.4.201 through 42.4.209, 42.4.1702, 42.4.2801 through 42.4.2803 pertaining to eliminated tax credits	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On May 9, 2022, at 2:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on April 22, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The 67th Montana Legislature enacted Senate Bill 399 (SB 399) which, among other things, eliminated or revised certain individual income tax credits which were provided in 15-30-2319, 15-30-2367, 15-30-2381, 15-31-131, 15-31-132, 15-31-171, and 15-32-109, MCA. Those statutes were all repealed by SB 399 effective as of January 1, 2022.

The department proposes to amend and repeal the above-stated rules, as applicable, which is necessary to implement SB 399. Amendments to rules remove statutory references from each rule's implementing authority. The rules proposed for repeal reflect SB 399's repeal of the respective rules' authorizing statutes, described above.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.4.1202 APPLICATION OF CREDITS AGAINST CORPORATE INCOME TAX LIABILITY (1) through (4) remain the same

AUTH: 15-31-501, MCA

IMP: 15-30-2320, 15-30-2326, 15-30-2380, 15-31-130, 15-31-131, ~~15-31-132,~~ 15-31-134, 15-31-150, 15-31-151, 15-31-161, ~~15-31-171,~~ 15-32-115, 15-32-402, 15-32-503, 15-32-602, 15-32-701, 15-32-703, 15-50-207, 17-6-316, MCA

42.26.101 ALTERNATIVE TAX (1) and (2) remain the same.

AUTH: 15-31-501, MCA
IMP: 15-31-101, ~~15-31-122, 15-31-131,~~ MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department also proposes to amend ARM 42.26.101 to remove 15-31-122, MCA, as an implementing statute. The implementing authority, amended to the rule in MAR Notice No. 42-2-960 (2016), should have been 15-31-132, MCA, but correcting it now has been rendered moot since SB 399 also repealed 15-31-132, MCA. The net result leaves 15-31-101, MCA, as the sole implementing authority for the rule.

5. The department proposes to repeal the following rules:

42.4.121 INDIVIDUAL ENERGY-RELATED TAX BENEFITS

AUTH: 15-1-201, 15-32-203, MCA
IMP: 15-32-102, 15-32-109, 15-32-115, 15-32-201, 15-32-202, MCA

42.4.201 DEFINITIONS

AUTH: 15-1-201, 15-32-105, MCA
IMP: 15-32-105, 15-32-109, MCA

42.4.202 INDIVIDUAL INCOME TAX CREDIT FOR ENERGY CONSERVING EXPENDITURES

AUTH: 15-1-201, MCA
IMP: 15-32-106, 15-32-109, MCA

42.4.203 CREDIT FOR ENERGY CONSERVATION INVESTMENT

AUTH: 15-1-201, 15-32-105, MCA
IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

42.4.204 CAPITAL INVESTMENTS FOR QUALIFYING ENERGY CONSERVATION CREDIT

AUTH: 15-1-201, 15-32-105, MCA
IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

42.4.205 TAX YEAR FOR CLAIMING THE ENERGY CONSERVATION CREDIT AND MULTIPLE UNITS OR INVESTORS

AUTH: 15-1-201, 15-32-105, MCA
IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

42.4.206 NEW CONSTRUCTION STANDARDS

AUTH: 15-32-105, MCA
IMP: 15-32-105, 15-32-109, MCA

42.4.207 RECORD RETENTION REQUIREMENTS

AUTH: 15-1-201, 15-32-105, MCA
IMP: 15-32-105, 15-32-106, 15-32-109, MCA

42.4.208 ANNUAL UPDATE OF CAPITAL INVESTMENTS QUALIFYING FOR THE ENERGY CONSERVATION CREDIT

AUTH: 15-1-201, 15-32-105, MCA
IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

42.4.209 STANDARDS AND RATINGS

AUTH: 15-1-201, 15-32-105, MCA
IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

42.4.1702 CREDIT FOR EMERGENCY LODGING

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA
IMP: 15-30-2103, 15-30-2381, 15-31-101, 15-31-102, 15-31-171, MCA

42.4.2801 DEFINITIONS

AUTH: 15-1-201, 15-31-501, MCA
IMP: 15-31-132, MCA

42.4.2802 HEALTH INSURANCE FOR UNINSURED MONTANANS CREDIT

AUTH: 15-31-501, MCA
IMP: 15-30-2367, 15-31-132, 33-1-207, MCA

42.4.2803 DETERMINING NUMBER OF EMPLOYEES

AUTH: 15-1-201, 15-31-501, MCA
IMP: 15-30-2367, 15-31-132, 33-1-207, MCA

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., May 16, 2022.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 399, Senator Hertz, was contacted by email on February 23, 2022.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules may significantly and directly impact small businesses, but any such significant or direct small business impact is attributable to the department only through the implementation of SB 399.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State April 5, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to licensed premises proximity requirements to places of worship or schools	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 9, 2022, at 3:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on April 22, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I DETERMINATION OF PROXIMITY TO PLACE OF WORSHIP OR SCHOOL (1) In order to apply the provisions of 16-12-207(3), MCA, to a cultivator licensee, manufacturer licensee, adult-use dispensary licensee, or medical marijuana dispensary licensee, the department must find:

(a) the entrance doors of the premises proposed for licensing and the entrance doors of the place of worship or school are situated on the same street; and

(b) the physical address of the premises proposed for licensing is designated as the same street as the physical address of the place of worship or school; and

(c) the distance, measured in a straight line from the entrance doors of the business proposed for licensing, and the entrance doors of the place of worship or school is 500 feet or less.

(2) If the three-part test in (1) is not met in its entirety, the provisions of 16-12-207, MCA, do not apply.

(3) The distance between entrance doors is measured by a geometric straight line, regardless of intervening property and buildings. An entrance is considered to be a means of ingress to the premises generally used by the public. This does not include egress-only doors, delivery, or service entrances.

(4) In the event that a county or city government should enact an ordinance or resolution supplanting the provisions of 16-12-207, MCA, the restriction shall not apply.

(5) A conformed copy of such supplanting ordinance or resolution must be submitted to the department by an applicant or a licensee, in the case where a local government adopts an ordinance or resolution regarding the premises location after the department approves the premises.

AUTH: 16-12-112, MCA
IMP: 16-12-207, MCA

REASONABLE NECESSITY. The department proposes to adopt New Rule I which is necessary to implement 16-12-207(3), MCA, and to specify the factors reviewed by the department in determining the street location of a premises proposed for licensure, and the method of determining proximity to places of worship or schools as required by 16-12-207(3), MCA.

The department notes that the proposed text in New Rule I is substantively the same as that found in ARM 42.12.129, which applies to an alcoholic beverage premises location's proximity to places of worship or schools, because the requirements of 16-12-207(3), MCA, are substantively the same as those found in 16-3-306, MCA, the implementing authority for ARM 42.12.129. Further, the proposed text in New Rule I complies with the Montana Supreme Court's opinion in *Hovey v. Department of Revenue*, 203 Mont. 27, 659 P.2d 280 (1983), which analyzed the plain and clear meaning of 16-3-306, MCA, and required the department's modification of ARM 42.12.129 consistent with its holding.

New Rule I also proposes to reiterate deference to local government authority to supplement or supplant 16-12-207, MCA, by ordinance should it choose. In those instances where a local government has not adopted any zoning ordinances, the requirements of New Rule I will govern.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m. May 16, 2022.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule may significantly and directly impact small businesses, but any such significant or direct small business impact is attributable to the department only through the implementation of 16-12-207, MCA.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State April 5, 2022.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I through V pertaining to election security definitions, security assessment requirements, security awareness training requirements, physical security requirements, and additional election security requirements; and the amendment of ARM 44.3.1701 pertaining to definitions related to the examination of voting machines and devices	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On May 6, 2022, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., April 29, 2022, to advise us of the nature of the accommodation that you need. Please contact Sue Ames, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2807; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail sames@mt.gov.

3. The rules proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS (1) As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Election security" means the process of implementing and maintaining protective measures that preserve the confidentiality, integrity, and availability of the election process. This includes network and information security as well as physical security.

(b) "Endpoint detection and response tool(s)" or "EDR tool(s)" means a software that continually monitors end-user devices to detect and respond to cyber threats.

(c) "Qualified assessor" means a security professional who, at the time of engagement, is certified and in good standing with at least of one of the following security credentials which require passing an exam covering related security subject matter and possessing the required amount of relevant information security work experience (based on certification requirements in effect on April 15, 2022):

(i) Certified Authorization Professional (CAP). The requirements to obtain a CAP credential can be found at https://www.isc2.org;

(ii) Certified Information Security Manager (CISM). The requirements to obtain a CISM credential can be found at https://www.isaca.org;

(iii) Certified Information Systems Auditor (CISA). The requirements to obtain a CISA credential can be found at https://www.isaca.org;

(iv) Certified Information Systems Security Professional (CISSP). The requirements to obtain a CISSP credential can be found at https://www.isc2.org;

(v) Certified in Risk and Information Systems Control (CRISC). The requirements to obtain a CRISC credential can be found at https://www.isaca.org;

(vi) GIAC Critical Controls Certification (GCCC). The requirements to obtain a GCCC credential can be found at https://www.giac.org;

(vii) GIAC Security Leadership Certification (GSLC). The requirements to obtain a GSLC credential can be found at https://www.giac.org; or

(viii) GIAC Systems and Network Auditor (GSNA). The requirements to obtain a GSNA credential can be found at https://www.giac.org.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: On May 14, 2021, the Governor of Montana signed into law House Bill (HB) 530. HB 530 required the Secretary of State to adopt rules defining and governing election security.

In August 2020, the Montana Legislative Audit Division released the Information Systems Audit related to the "Security and Maintenance of Montana Election Systems." One of the recommendations indicated, "SOS should align the definition of election security within rule with statute and provide further guidance on necessary security measurements."

The Office of the Secretary of State is proposing New Rule I to clarify definitions of terms used within this subchapter in response to the legislative audit recommendation and to fulfill the requirements of the new law. In addition, the definition of "qualified assessor" outlines the required credentials for completing the security assessments to ensure those performing the review have the knowledge and training necessary to adequately complete the assessment.

NEW RULE II ANNUAL SECURITY ASSESSMENTS (1) Election security practices performed at county election offices shall be annually assessed based on controls derived from one of the following frameworks that detail security best practices for mitigating security risks to an organization:

(a) the National Institute of Standards and Technology's "Framework for Improving Critical Infrastructure Cybersecurity," Version 1.1, published April 16, 2018, found at https://www.nist.gov;

(b) the National Institute of Standards and Technology's Special Publication 800-53 Revision 5 titled "Security and Privacy Controls for Information Systems and Organizations," published December 10, 2020, found at https://www.nist.gov;

(c) the Center for Internet Security's "CIS Critical Security Controls," Version 8, published May 2021, found at https://www.cisecurity.org; or

(d) the Center for Internet Security's "A Handbook for Elections Infrastructure," version 1.0, published February 2018, found at https://www.cisecurity.org.

(2) Assessments shall be performed according to the following schedule:

(a) at least once every three years, the security assessment shall be performed by an independent, third-party, and qualified assessor; and

(b) during all other years, the security assessments may be performed using a self-assessment conducted through the Nationwide Cybersecurity Review (NCSR) based on requirements as of April 15, 2022, and found at https://www.cisecurity.org/, or the Election Infrastructure Assessment Tool (EIAT) based on requirements as of April 15, 2022, and found at https://www.cisecurity.org/. These tools detail the security best practices for mitigating security risks to an organization.

(3) County election administrators shall maintain storage of security assessment results according to the local government records retention schedule.

(4) County election administrators shall provide the results of the assessments to the Secretary of State in January of each calendar year. The results provided to the Secretary of State will include a management description detailing the controls assessed and the effectiveness of each control. The management description shall include the name and qualification of the assessor including their security credential's verification, certification, or identification number.

(5) Security assessments are considered confidential information as defined in 2-6-1002(1), MCA. Security assessment results and supporting security information are prohibited from disclosure to the public.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: On May 14, 2021, the Governor of Montana signed into law House Bill (HB) 530. HB 530 required the Secretary of State to adopt rules defining and governing election security.

In August 2020, the Montana Legislative Audit Division released the Information Systems Audit related to the "Security and Maintenance of Montana Election Systems." One of the recommendations indicated "SOS should align the definition of election security within rule with statute and provide further guidance on necessary security measurements."

The Office of the Secretary of State is proposing New Rule II in response to the legislative audit recommendation and to fulfill the requirements of the new law.

Election infrastructure is considered critical infrastructure with a higher impact and likelihood of security risks. HB 530 required counties to conduct annual security assessments which will identify current threats and risks to their office and identify the effectiveness of their security controls at mitigating those threats and risks. New Rule II provides clarification on the framework that should be used to conduct the security assessments to ensure adequacy and consistency of the reviews. New Rule II also outlines the format of the results to be provided to the Secretary of State.

NEW RULE III ANNUAL SECURITY AWARENESS TRAINING (1) All county and state elections staff shall complete security awareness training at least once per year.

(2) The security awareness training will be provided by the Secretary of State. The Secretary of State may approve equivalent security awareness training on a case-by-case basis.

(3) The county election administrator shall maintain records of their election staff's completion of the security awareness training in accordance with the local government records retention schedule.

(4) The county election administrator shall provide the Secretary of State with records of their election staff's completion of the security awareness training within two weeks after the end of each annual training cycle.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: On May 14, 2021, the Governor of Montana signed into law House Bill (HB) 530. HB 530 required the Secretary of State to adopt rules defining and governing election security.

In August 2020, the Montana Legislative Audit Division released the Information Systems Audit related to the "Security and Maintenance of Montana Election Systems." One of the recommendations indicated "SOS should align the definition of election security within rule with statute and provide further guidance on necessary security measurements."

The Office of the Secretary of State is proposing New Rule III in response to the legislative audit recommendation and to fulfill the requirements of the new law.

Phishing emails are one of the biggest threats to a county election office. Security awareness training is a measure to mitigate the threat by ensuring election staff can identify phishing emails. New Rule III implements an annual security awareness training requirement and outlines what should be done with those records.

NEW RULE IV PHYSICAL SECURITY (1) Any type of component that is used within a voting system as defined in 13-1-101, MCA, shall be physically secured using tamperproof seals and access control to prevent unauthorized tampering or use.

(2) County election administrators shall maintain a record and a chain of custody for any type of component that is used within a voting system as defined in 13-1-101, MCA, and any keys, cards, fobs, or other controls used to access election-related equipment or storage locations.

(a) County election administrators shall document records and chains of custody on forms prescribed by the Secretary of State and located on the Secretary of State website.

(b) The chain of custody shall be documented every time there is a change in custody of the items or a removal of a tamperproof seal.

(c) The chain of custody records shall be maintained according to the local government records retention schedule.

(3) For each election, county election administrators shall perform a reconciliation comparing the number of ballots printed to the number of issued, voided, or unissued ballots.

(a) Ballot reconciliations shall be completed prior to the start of the county canvass.

(b) Ballot reconciliations shall be maintained according to applicable federal or local government records retention schedules.

(4) Based on security best practices, it is recommended that the room or other areas where ballots are opened, processed, tabulated, or hand-counted be surveilled during the time that such activities are performed.

(a) Surveillance devices should be positioned to view and record all activities related to opening, processing, and tabulating or hand-counting ballots except that the devices must be positioned so that ballot secrecy is maintained.

(b) The storage of surveillance device footage shall be maintained according to applicable federal or local government records retention schedules.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: On May 14, 2021, the Governor of Montana signed into law House Bill (HB) 530. HB 530 required the Secretary of State to adopt rules defining and governing election security.

In August 2020, the Montana Legislative Audit Division released the Information Systems Audit related to the "Security and Maintenance of Montana Election Systems." One of the recommendations indicated, "SOS should align the definition of election security within rule with statute and provide further guidance on necessary security measurements." On page 11, the report indicated that SOS should adopt rules clarifying election security measures that "include physical security of voting technology assets, such as tabulators, USB flash drives, and various computers." The audit noted, "This would assist counties in understanding what is necessary for securing voting systems before, during, and after an election."

The Office of the Secretary of State is proposing New Rule IV in response to the legislative audit recommendation and to fulfill the requirements of the new law.

Physical security is a large component of security at a county election office. Voting system components and ballots need to be physically secured to prevent unauthorized access and manipulation. Access control, chain of custody, surveillance, and ballot reconciliations are measures being proposed to mitigate and detect unauthorized access and manipulation.

NEW RULE V OTHER ELECTION SECURITY REQUIREMENTS (1) Any type of component that is used within a voting system as defined in 13-1-101, MCA, shall not be connected to a computer network at any time.

(2) Workstations, desktops, laptops, or other computing devices used by county election departments and connected to a computer network shall have endpoint detection and response (EDR) tools or anti-virus software installed, operating as recommended by the vendor and updated with the latest signatures or other version as required and supported by the vendor.

AUTH: 13-1-205, MCA
IMP: 13-1-205, MCA

REASONABLE NECESSITY: On May 14, 2021, the Governor of Montana signed into law House Bill (HB) 530. HB 530 required the Secretary of State to adopt rules defining and governing election security.

In August 2020, the Montana Legislative Audit Division released the information systems audit related to the "Security and Maintenance of Montana Election Systems." One of the recommendations indicated "SOS should align the definition of election security within rule with statute and provide further guidance on necessary security measurements."

The Office of the Secretary of State is proposing New Rule V in response to the legislative audit recommendation and to fulfill the requirements of the new law.

Endpoint detection and anti-virus software are technical controls to mitigate the high risk of malware and ransomware. Voting systems that are connected to a network increase the threat landscape of election infrastructure to an unnecessary level.

4. The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

44.3.1701 EXAMINATION OF VOTING MACHINES AND DEVICES

(1) remains the same.

(2) Unless the context clearly requires otherwise, the following terms shall have the following meanings:

(a) through (c) remain the same.

(d) "Device" means a "voter interface device" as defined in 13-1-101, MCA. ~~an apparatus used for voting by the process of marking of a ballot. Ballots are counted using automatic tabulating equipment.~~

(e) through (g) remain the same.

~~(h) "Marking device" means any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.~~

~~(i)~~ (h) "System" means a "voter interface device" and "voting system" as defined in 13-1-101, MCA. ~~includes a self-contained mechanical voting machine or an electronic voting device and the individual components of each.~~

~~(j)~~ (i) "Voting machine" means a "voting system" as defined in 13-1-101, MCA. ~~mechanical apparatus on which to cast votes.~~

(3) through (7) remain the same.

AUTH: 13-1-202, 13-17-103, 13-17-107, MCA
IMP: 13-1-202, 13-17-101, 13-17-103, MCA

REASONABLE NECESSITY: In August 2020, the Montana Legislative Audit Division released the information systems audit related to the "Security and Maintenance of Montana Election Systems." On page 11 of the report, it was noted

that the definition of "voting system" in 13-1-101, MCA, and definitions for voting machines and devices in ARM 44.3.1701 were not consistent.

The proposed changes to ARM 44.3.1701 are responsive to the recommendation.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., May 13, 2022.

6. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

8. With regard to the requirements of 2-4-302(2)(d), MCA, the primary bill sponsor, Representative McKamey, was contacted by email on October 19, 2021, and on January 27, 2022.

9. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 5th day of April 2022.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.106, 44.3.110, 44.3.115, 44.3.116, and 44.3.2702 pertaining to procedures facilitating disabled voter access	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 6, 2022, at 1:30 p.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., April 29, 2022, to advise us of the nature of the accommodation that you need. Please contact Sue Ames, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2807; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail sames@mt.gov.

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

44.3.106 EXEMPTION PROCEDURE (1) If an existing polling place has been surveyed and designated as "inaccessible," the election administrator shall make a reasonable effort to seek and survey for accessibility other potential sites with comparable utility as a polling place.

(2) If potential polling place facilities have been surveyed and no accessible facility is available and the facilities which are available cannot safely and reasonably be made temporarily accessible, the election administrator shall request in writing to the secretary of state that the existing polling place be exempt from the criteria set forth in these rules.

(3) A separate request for exemption shall be submitted for each polling place not in compliance. The request shall identify the polling place, how it is not in compliance, the efforts being made to bring it into compliance, and the efforts to locate an alternate site.

(4) Within 30 days following the receipt of a request for exemption, the secretary of state may grant a certification of exemption to the election administrator for that polling place. Such exemption, if granted, shall be valid for a period of three years from the date of issuance.

(5) The secretary of state may grant an exemption pursuant to this subchapter if all potential polling places have been surveyed and the election administrator has certified that:

(a) an accessible polling place is not available and the county or school district cannot safely or reasonably make a polling place temporarily accessible in the area involved; or

(b) the location is designated inaccessible because it is a rural polling place and designation of an accessible facility as a polling place will require excessive travel or impose other hardships for the majority of qualified electors in the polling place.

(6) If the secretary of state has reason to believe such an exemption would not be in the best interest of the majority of the individuals with disabilities ~~or elderly electors~~, ~~he~~ the secretary of state shall deny the exemption and:

(a) report to the election administrator and the county governing body ~~his~~ the secretary's reasons for the denial.

(7) A polling place designated 45 days prior to an election as inaccessible because it is rural shall be exempt from the on-site survey procedure provided in ARM 44.3.108.

(8) If one or more individuals with disabilities ~~or elderly electors~~ contact the election administrator or the secretary of state concerning a specific exemption, the secretary of state shall work in cooperation with the election administrator and the individuals with disabilities ~~or elderly person(s)~~ in locating an available facility that is accessible or providing an acceptable alternative method of voting according to the provisions in ARM 44.3.110.

AUTH: 13-3-205, MCA
IMP: 13-3-207, 13-3-212, MCA

REASONABLE NECESSITY: On March 16, 2021, the Governor of Montana signed into law Senate Bill (SB) 15. SB 15 revises election laws related to accessibility for disabled electors. The proposed amendments are necessary to comport with the statutory amendments made in Section 7 and Section 10 of SB 15 (2021).

44.3.110 ALTERNATIVE MEANS FOR CASTING BALLOT (1) The election administrator shall provide an alternative method of voting for those electors who are unable, because of disability ~~or age~~, to access their regular polling place. Those methods are limited to the following:

(a) the practice, commonly referred to as "curbside voting.", ~~,~~ as provided by 13-13-118, MCA;

(b) absentee balloting, as provided by 13-13-222 and 13-13-246, MCA; and

(c) prearranged assignment to an accessible polling place within the county. An elector, prevented from voting at ~~his~~ the elector's own polling place on election day because it has been exempt from meeting the accessibility criteria set forth in these rules, shall:

(i) notify the election administrator, in writing at least two business ~~seven~~ days preceding the election, of ~~his~~ the elector's desire to vote on election day at an accessible polling place;

(ii) be assigned to the nearest accessible polling place for the purpose of voting in that election;

(iii) sign ~~his~~ the elector's name on a special addendum to the official precinct

register, as required by 13-2-601, MCA; and

(iv) receive the same ballot to which ~~he~~ the elector is otherwise entitled.

(2) For the purposes of this rule, the ballot shall be processed and counted in the same manner as an absentee ballot.

AUTH: 13-3-205, 13-13-246, MCA
IMP: 13-3-213, 13-13-246, MCA

REASONABLE NECESSITY: On March 16, 2021, the Governor of Montana signed into law Senate Bill (SB) 15. SB 15 revises election laws related to accessibility for disabled electors. The proposed amendments are necessary to comport with the statutory amendments made in Section 7 and Section 11 of SB 15 (2021).

44.3.115 CRITERIA AND PROCESS FOR A PERSON TO BECOME A DESIGNATED AGENT FOR AN ELECTOR WITH A DISABILITY (1) Consistent with 13-1-116, MCA, an elector with a disability who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to Title 13, MCA, and for delivering the disabled elector's absentee ballot application to the county election administrator, as provided in 13-13-213, MCA.

(2) An application for designation of an agent by an elector under this ~~section~~ rule:

(a) must be made on a form prescribed by the secretary of state which shall state the authorization of the elector, the purpose of the agency, and shall require that the authorization be witnessed by two disinterested witnesses and signed by the designated agent;

(b) may be obtained from local election officials, from the office of the secretary of state, and from any other entity that provides the form; and

(c) must be completed in its entirety.

(3) An agent chosen under this rule must not be the elector's employer, an agent of the elector's ~~individual's~~ employer, or an officer or agent of the elector's ~~voter's~~ union.

(4) An election official must ask if the person being designated an agent is the elector's ~~voter's~~ employer or employer's agent or officer or agent of the elector's ~~voter's~~ union. If the proposed agent is one of those individuals, the elector ~~voter~~ must choose another person to be the elector's agent.

(5) An agent must be chosen by the elector ~~individual~~ with a disability.

AUTH: 13-1-116, MCA
IMP: 13-1-116, MCA

REASONABLE NECESSITY: On March 16, 2021, the Governor of Montana signed into law Senate Bill (SB) 15. SB 15 revises election laws related to accessibility for disabled electors. The proposed amendments are necessary to comport with the statutory amendments made in Section 2 of SB 15 (2021). In addition, clerical changes are proposed to provide consistency in terminology.

44.3.116 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) County election administrators shall allow electors with disabilities, as defined in 13-3-202, MCA, to receive election materials electronically as long as the security of transmission and identity of each elector is confirmed and facilities are available to maintain the accuracy, integrity, and secrecy of the ballot process. The following procedures shall be followed, wherever applicable, in regard to the transition of election materials from the election administrator to electors electronically:

(a) A county election administrator must use a system that is secure from unauthorized access.

(b) When an election administrator receives a valid application for electronic transmission of a ballot from an elector with disabilities, the election administrator shall, subject to (1), e-mail the elector the ballot, instructions to the elector, and a transmittal cover sheet that includes an elector affirmation. A ballot secrecy envelope or page and a ballot signature envelope shall be provided either electronically or through the mail to each elector with a valid application for electronic ballot. The original ballot shall be retained in a secure absentee envelope or container for that purpose.

(c) The election administrator shall keep an official log of all ballots transmitted electronically.

(d) After the voted ballot and affirmation are received at the office of the election administrator, the transmittal cover sheet with affirmation must be retained in a sealed envelope or container separately from the ballot.

~~(d)~~ (e) If the received ballot is acceptable pursuant to the requirements of 13-13-246, MCA, the election administrator shall:~~,~~

(i) if the ballot was returned in a secrecy envelope, without opening the secrecy envelope containing the voted ballot, log in the receipt of the ballot and place it in the secure absentee envelope or container with the original ballot~~.~~; or ~~The transmittal cover sheet with affirmation must be retained in a sealed envelope or container separately from the ballots.~~

(ii) if the ballot was returned using a secrecy page, to ensure the ballot is not revealed to anyone, place the printed electronically submitted ballot and secrecy page into an appropriate envelope and then place it in the secure absentee envelope or container with the original ballot.

~~(e)~~ (f) On the day before election day or on election day, the election administrator shall have the returned ballots transcribed using the procedure prescribed below.

~~(f)~~ (g) The voted ballot must be transcribed in a manner that ensures that no one transcribing the ballot has access to the name of the elector who voted the ballot.

~~(g)~~ (h) No less than three election officials shall participate in the transcription process to transfer the elector's votes from a received ballot, as applicable, to the standard ballot used in the precinct.

~~(h)~~ (i) An electronically transmitted ballot identifying number shall be written on the original transcribed ballot, the envelope containing the voted ballot and the electronically transmitted ballot, and in the official transcription log.

~~(i)~~ (j) The election officials who transcribed the electronically transmitted ballot shall sign the log for each ballot they transcribe.

~~(j)~~ (k) No one participating in the electronic ballot transmission or transcription process may reveal any information about the elector's identity or the votes on the elector's ballot.

AUTH: 13-13-246, MCA
IMP: 13-13-246, MCA

REASONABLE NECESSITY: On March 16, 2021, the Governor of Montana signed into law Senate Bill (SB) 15. SB 15 revises election laws related to accessibility for disabled electors. The proposed amendments are necessary to comport with the statutory amendments made in Section 15 of SB 15 (2021).

44.3.2702 PLAN SPECIFICATIONS (1) The plan for the conduct of an election or elections held on the same election day must include:

(a) a statement indicating the type of jurisdiction involved including sufficient information to demonstrate that it is in fact one of the jurisdictions for which the mail ballot option is available;

(b) a description of the type of election to be conducted;

(c) the estimated number of eligible electors in the jurisdiction at the time the plan is written;

(d) if the jurisdiction is a multicounty district, a listing of the other election administrators involved and a statement designating which one will function as the chief election administrator for that specific election;

(e) if the election is for school district purposes designate who will conduct the election--school district clerk (election administrator) or county election administrator;

(f) if proportional voting is required, a reference to the applicable statute and a complete description of the method to be used to satisfy the statutory requirements for proportional voting;

(g) if voting is permitted by electors who are eligible but otherwise not registered, a description of the eligibility requirements;

(h) the total number of "places of deposit," other than the election office contemplated, if any, together with the address of each and a description of its nature;

(i) a written timetable for the conduct of the election prepared in accordance with the specifications set forth in ARM 44.3.2703 ~~below~~;

(j) procedures to ensure that the voter interface devices required in 13-3-208, MCA are available at locations appropriate to provide accessibility for disabled electors;

~~(j)~~ (k) an indication of how postage will be handled for:

(i) returned as undeliverable (e.g., "return postage guaranteed"); and

(ii) returns (e.g., elector to apply own postage or postage pre-paid, how);

~~(k)~~ (l) if the election is for school district purposes, a brief narrative of the procedures to be followed from the time the ballots are received from the electors until they are tabulated, including arrangements made for transfer of ballots from/to

the school district clerk and the county election administrator for verification of signatures;

~~(l)~~ (m) a description of the procedures to be used to ensure ballot security at all stages of the process.

~~(m)~~ (n) sample written instructions shall be consistent with 13-19-205, MCA.

AUTH: 13-19-105, MCA
IMP: 13-19-205, MCA

REASONABLE NECESSITY: On March 16, 2021, the Governor of Montana signed into law Senate Bill (SB) 15. SB 15 revises election laws related to accessibility for disabled electors. The proposed amendments are necessary to comport with the statutory amendments made in Section 9 and Section 16 of SB 15 (2021).

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., May 13, 2022.

5. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

7. With regard to the requirements of 2-4-302(2)(d), MCA, the primary bill sponsor, Senator Ellis, was contacted by email (confirmed receipt) on December 27, 2021, and on March 9, 2022.

8. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ ANGELA NUNN
Angela Nunn
Chief Deputy Secretary of State

Dated this 5th day of April 2022.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.156.2701 definitions, 24.156.2711 ECP licensure qualifications, 24.156.2713 ECP license application, 24.156.2718 continued competency requirements; the adoption of NEW RULE I fee schedule; and the repeal of 24.156.601, 24.156.631, 24.156.1002, 24.156.1302, 24.156.1402, 24.156.1618, 24.156.2731 fees, and 24.156.2721 final pre-licensing examinations	)))))))))))))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On November 5, 2021, the Board of Medical Examiners (board) published MAR Notice No. 24-156-92 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1482 of the 2021 Montana Administrative Register, Issue No. 21.

2. On December 1, 2021, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules via the videoconference and telephonic platform. Comments were received by the December 3, 2021, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

Comments 1 through 18 apply to the rule changes in general:

COMMENT #1: Several commenters express generalized support for the changes.

RESPONSE #1: The board appreciates all comments received in the rulemaking process.

COMMENT #2: Several commenters expressed generalized opposition to the rule changes.

RESPONSE #2: The board appreciates all comments received in the rulemaking process.

COMMENT #3: One commenter suggested that the board provide a list of licenses from other states that are considered equivalent to Montana licenses.

RESPONSE #3: The suggestion is beyond the scope of this rule proposal.

COMMENT #4: One commenter suggested providing lead instructors or training officers with access to the license records of ECPs working within their respective services to assist in tracking ECPs' ongoing continuing education.

RESPONSE #4: The suggestion is beyond the scope of this rule proposal.

COMMENT #5: One commenter asked when the proposed rule changes would become effective.

RESPONSE #5: The intended filing date for this project is April 5, 2022, which has a corresponding publication date of April 15, 2022, per the Secretary of State's filing and publication schedule. With this publication, the rules will become effective April 16, 2022. The department's procedure is to send notice to commenters and impacted licensees when rule changes are adopted.

COMMENT #6: One commenter criticized the NREMT website and the NREMT application process.

RESPONSE #6: The board appreciates all comments received in the rulemaking process.

COMMENT #7: One commenter expressed concern regarding how the rule proposal would impact EMS agency reporting through Image Trend.

RESPONSE #7: Image Trend administration is not a program that is under the board's jurisdiction.

COMMENT #8: One commenter asked who sponsored the bill for the changes proposed.

RESPONSE #8: The board is proposing changes to administrative rules, not statutes; therefore, the changes are not associated with any bill. In the proposal notice, paragraph (10) indicates that the bill sponsor contact requirements of 2-4-302, MCA, do not apply to this rulemaking project.

COMMENT #9: One commenter alleged that the rule proposal language was drafted or informed by the Department of Public Health and Human Services (DPHHS).

RESPONSE #9: At the direction of the board, staff drafted the proposed rule changes and the board reviewed and approved the changes. Board staff requested DPHHS data in analyzing how changes to ECP examination might impact licensees,

particularly with regard to rural and/or volunteer ECPs. DPHHS staff, along with other stakeholders, participated in board meetings which included ECP discussion. Section 50-6-203, MCA, requires that the board consult with the Department of Public Health and Human Services when engaged in ECP rulemaking.

COMMENT #10: Numerous commenters appreciate the board's interest in establishing efficient licensure processes.

RESPONSE #10: The board appreciates all comments received in the rulemaking process.

COMMENT #11: Numerous commenters stated the department's expertise is in record keeping and documentation, not education and examination, and that requiring a national examination fosters a better organizational structure for the department.

RESPONSE #11: The board agrees and appreciates all comments received in the rulemaking process.

COMMENT #12: Multiple commenters stated that the department's licensure methodologies should be different for different license types - like those of plumbers, electricians, and barbers - issued by different licensing boards.

RESPONSE #12: The board only has authority to establish licensure qualifications for the license types under its jurisdiction.

COMMENT #13: Numerous commenters oppose making policy decisions based on goals of standardization, consistency, efficiency, and licensee mobility. Commenters stated the board should focus on patient care and safety.

RESPONSE #13: Public health, safety, and welfare have always been and continue to be the board's mission and responsibility. Standardization, consistency, and efficiency all contribute to quality health care and enhanced patient safety. Finally, license portability benefits licensees and the public.

COMMENT #14: Multiple commenters state that the department provides support to the board, and its internal goals should not drive the direction of rulemaking.

RESPONSE #14: As the agency administratively attached to the professional and occupational licensing boards, the department is responsible for, among other things, providing all administrative, legal, and clerical services needed by the board. See 37-1-101, MCA. The board thoroughly reviewed, revised, discussed, and ultimately approved the rule changes prior to filing with the Secretary of State.

COMMENT #15: Numerous commenters state that physicians have experienced long delays in getting communications-related decisions of the screening panel and in having complaints reviewed.

RESPONSE #15: This comment is outside the scope of the rule proposal.

COMMENT #16: One commenter stated the board is acting too quickly in suggesting the proposed changes.

RESPONSE #16: The board disagrees and notes that the board held several meetings to discuss the changes involved in this proposal, starting in May 2021. Additionally, as stated in previous responses, the board reviewed numerous comments and data points prior to its decision to proceed with this rule proposal.

COMMENT #17: One commenter expressed confusion regarding the scope of practice for AEMT licensees.

RESPONSE #17: Scope of practice for AEMT licensees is not part of this rule proposal.

COMMENT #18: One commenter expressed concern that previous comments to the board regarding these proposed rule changes were hidden or ignored.

RESPONSE #18: The board disagrees and has reviewed all comments submitted to the board and department regarding this rule proposal. The board also reviewed all comments received in response to the licensee survey on the rule changes.

Comments 19 through 27 apply to ARM 24.156.2701, 24.156.2711, 24.156.2713, 24.156.2718, and 24.156.2721:

COMMENT #19: Several commenters were concerned that the proposed changes will be burdensome for ECPs, reduce the number of licensed ECPs in Montana, deter volunteers, and noted that ECPs will quit if required to take another test.

RESPONSE #19: The board disagrees. Prior to finalization of the proposed rules, the board conducted several surveys of ECP licensees, lead instructors, and medical directors; reviewed examination and licensee and EMS service data; evaluated examination data; and solicited stakeholder input during its 2021 meetings. Following a thorough review of the information obtained, the board concluded that requiring applicants for ECP licensure to pass NREMT certification examination(s) will not decrease the licensee population. Additionally, the board would like to clarify that the proposed rules do not require currently licensed ECPs to become NREMT certified or pass an NREMT certification exam.

COMMENT #20: Two commenters were concerned with the cost of maintaining NREMT certification.

RESPONSE #20: The board is reducing license application and renewal fees in NEW RULE I. Further, assessing and revising the alternative written examination would be a significant cost that would ultimately be passed on to ECP licensees.

The board believes it is fiscally responsible to require NREMT examination rather than maintain the alternative written examination.

COMMENT #21: Numerous commenters thanked the board for its thoughtful consideration of ECP licensure changes which included discussion over the course of several meetings, surveys of licensees, and solicitation of stakeholder input prior to drafting the proposed rule changes.

RESPONSE #21: The board appreciates all comments received in the rulemaking process.

COMMENT #22: One commenter stated that the board is abandoning EMS in rural Montana and asked what drove this decision.

RESPONSE #22: The board has carefully considered the impact to ECPs working in rural areas. Board staff surveyed licensees, analyzed geographic examination and licensure data, and included stakeholders in discussions leading up to this proposal. Recorded minutes of the board's discussion are available on the board's website (May 6 and 7, 2021; July 16, 2021; September 17, 2021). Following thorough review, the board determined that eliminating the state written examination will not negatively impact the number of ECPs licensed in rural Montana.

COMMENT #23: One commenter requested that the board publish the results of the lead instructor and medical director survey that was conducted.

RESPONSE #23: The survey is public information and can be requested through the public records request process. It was included in the public board books for the July 16 and September 17, 2021, meetings when it was discussed.

COMMENT #24: Multiple commenters noted that 50-6-203, MCA, requires the board to consult the Department of Public Health and Human Services (DPHHS) when making ECP rule changes. The commenters urged the board to review the statute and convene a meeting to engage DPHHS in a meaningful way.

RESPONSE #24: DPHHS officials participated in every meeting and discussion about ECP licensing changes and the current rule proposal. The department also provided data collected by DPHHS, which the board reviewed to aid in its decision making. Additionally, associations and organizations have been, and continue to be, able to participate in all public meetings of the board. The board has met its statutory obligations in regard to the rule changes and the rulemaking process.

COMMENT #25: Numerous commenters appreciated the effort to conduct a survey of medical directors but question its value. The commenters stated that some medical directors received a single question survey, and that medical directors could provide greater insight to the board.

RESPONSE #25: The medical director survey included seven questions and was distributed by email to all medical director licensees. Forty percent of recipients opened the email that included the survey, and approximately 26% of recipients completed the survey, which far exceeds standard email response benchmarks. The survey was sent to the 149 medical director-endorsed physicians and physician assistants, and 38 medical directors completed the survey during the five-week period it was open. Additionally, members of the board's Medical Direction Committee were invited to and participated in the July 2021 board meeting and its ECP rules discussion.

COMMENT #26: One commenter opposed the proposed changes, stating the current rules are fair and provide a competency-based system of licensure for ECPs. The commenter also believed the medical director committee provided the board a mechanism to obtain recommendations on issues such as exam content.

RESPONSE #26: The board appreciates all comments received in the rulemaking process.

COMMENT #27: One commenter opposes NREMT in general.

RESPONSE #27: The board appreciates all comments received in the rulemaking process.

Comments 28 through 30 apply to ARM 24.156.2701 and 24.156.2718:

COMMENT #28: Several commenters state that the proposed changes to ARM 24.156.2701 and 24.156.2718 simplify or clarify the continuing education process.

RESPONSE #28: The board appreciates all comments received in the rulemaking process.

COMMENT #29: Several commenters stated that the current renewal process is loosely detailed and open to interpretation by services and instructors, which results in a wide range of ECP competency. Commenters also stated that the current renewal process places content burden on the lead instructor and medical director and supported allowing NREMT certification to demonstrate continued competency for licensing renewal, as it will reduce administrative burden.

RESPONSE #29: The board notes that one intent of the rule changes is to clarify and streamline the renewal process.

COMMENT #30: Numerous commenters stated that focusing on competency provides increased flexibility to service medical directors to tailor education to the needs of each service.

RESPONSE #30: The board agrees.

Comment 31 applies to ARM 24.156.2711:

COMMENT #31: Numerous commenters support the amendment provided in ARM 24.156.2711(2), contingent on the addition of testing locations in Montana. Commenters also suggested adding language to allow for flexibility for any periodic recertifications.

RESPONSE #31: The proposed amendment to ARM 24.156.2718 includes language to allow flexibility in meeting continued competency requirements. Additionally, NREMT is assisting the board in identifying and acquiring additional testing sites.

Comments 32 through 40 relate to ARM 24.156.2711 and 25.156.2713:

COMMENT #32: Numerous commenters support Montana again requiring NREMT examination for ECP licensure because it will standardize the testing process and reduce confusion for EMS agencies, instructors, prospective ECPs, patients, and employers. Commenters noted that NREMT provides consistent and clear expectations in training and patient care, many services/agencies in Montana already require NREMT certification, and examination inconsistencies lead to inconsistencies in patient care.

RESPONSE #32: The board appreciates all comments received in the rulemaking process.

COMMENT #33: Numerous commentors support maintaining a pathway to licensure for ECPs with a current unrestricted, substantially equivalent license from another state with a complaint process.

RESPONSE #33: The proposed rule changes do not affect this pathway.

COMMENT #34: Two commenters criticized sections (2) of ARM 24.156.2711 and 24.156.2713 providing that "the board or its designee may approve the applicant to undergo an assessment exam." The commenters noted the rules do not specify the applicants must pass the examination and suggested amending the sections to require successful completion of the NREMT exam and set a passing score.

RESPONSE # 34: Because the board's intent has always been that applicants are required to pass the assessment exam, the board is amending ARM 24.156.2711(2) and 24.156.2713(2) accordingly to clarify this intent.

COMMENT #35: One commenter expressed concern that AEMT qualifications are higher for NREMT certification than for Montana licensure.

RESPONSE #35: Part of the board's intent in proposing these rule changes is to standardize qualifications for licensure.

COMMENT #36: One commenter suggested that requiring NREMT certification for new ECP licensure will not increase license mobility.

RESPONSE #36: The board disagrees.

COMMENT #37: One commenter supports that the NREMT certificate will be the only license required for ECPs.

RESPONSE #37: The board will remain the licensing authority; however, one way for applicants to qualify for ECP licensure in Montana will be passage of a NREMT examination. This licensure pathway is not new and has been available to applicants. One of the main purposes of the rule proposal is to discontinue use of the alternative written examination for ECP applicants to qualify for licensure.

COMMENT #38: Several commenters stated that current licensing requirements are confusing to instructors, students, employers, and patients. One commenter stated that streamlining and cleaning up licensing requirements will improve things for ECPs and the public.

RESPONSE #38: The board agrees and notes the intent of this proposal is to eliminate confusion.

COMMENT #39: One commenter stated that language in the rule proposal stating "assessment exam administered by NREMT" means a DPHHS employee paid by NREMT.

RESPONSE #39: While the assessment examination is substantively identical to the NREMT certification examination, the difference is that upon passage of the NREMT assessment examination, the candidate is not certified by NREMT. DPHHS employees do not administer any written examination offered by NREMT. The board is unaware of NREMT's agreements with those who administer practical examinations, but notes that they are not required to be DPHHS employees.

COMMENT #40: One commenter stated that one avenue to licensure through NREMT is not the best for Montana citizens.

RESPONSE #40: The board disagrees.

Comments 41 through 53 apply to ARM 24.156.2718:

COMMENT #41: A few commenters were concerned about the process for licensees (who became licensed by taking the alternative written examination) to maintain their licensure.

RESPONSE #41: In the proposed rule changes, two methods are available to meet continued competency requirements. NREMT certification is not proposed to be a

requirement of currently licensed ECPs. The board does not intend to require currently licensed ECPs to become NREMT certified if they are not already.

COMMENT #42: Numerous commenters support that the proposed change to continuing competency will allow currently licensed ECPs who do not wish to become NREMT certified to maintain their licenses through continuing competency education that is approved by their lead instructors or medical directors. One commenter noted that the proposed rule changes regarding the examination accepted for licensure applies to individuals applying for a Montana license.

RESPONSE #42: The board appreciates all comments received in the rulemaking process.

COMMENT #43: Two commenters opposed having two pathways to demonstrate continued competency and requested the current requirements stay in place. One commenter believes the proposed rule change establishes two different standards for ECP renewal.

RESPONSE #43: The board is proposing two pathways for meeting continued competency requirements to accommodate ECPs currently licensed in Montana who are not NREMT certified and do not wish to become NREMT certified. ARM 24.156.2718(2)(a) simplifies the renewal process for NREMT registered ECPs; (2)(b) allows currently licensed ECPs to renew their licenses without registering with NREMT, but requires meeting the same competency training as for NREMT certified licensees. To clarify its intent that all continued competency requirements be the same for all ECPs, regardless of NREMT certification, the board is amending ARM 24.156.2718(2)(b) accordingly.

COMMENT #44: Two commenters expressed concern regarding NREMT continued competency requirements. The commenters opined that the NREMT requirements allow ECPs to simply attend continuing education classes rather than demonstrate continued competency and that NREMT requirements are not skills based.

RESPONSE #44: NREMT continued competency requirements were thoroughly discussed during at least two public board meetings, including specific details, including number of hours, topics to be covered, and requirements for in-person hours. The requirements are broken down by topic area and license type and can all be located on the NREMT website. Additionally, the NREMT continued competency program includes practice performance as one of its key principles, and the local component allows Montana medical directors and lead instructors to incorporate additional skills based hands-on learning to meet community needs. Finally, current board rules lack specific requirements regarding knowledge or skills to be addressed in refresher courses and the board has determined, based upon review and public comment, that alignment with NREMT requirements provides needed clarity and uniformity for licensees, lead instructors, and medical directors.

COMMENT #45: Several commenters were concerned if licensed ECPs who are not currently or who have never been NREMT certified, will have to pass an NREMT examination to maintain their Montana license.

RESPONSE #45: Current licensees will not be required to take the NREMT examination. Additionally, the proposal provides license renewal requirements in ARM 24.156.2718 which provide licensees the opportunity to provide proof of completion of continued competency requirements without providing a current active or inactive NREMT certification card.

COMMENT #46: Two commenters expressed concerns regarding what the continued competency requirements are and who can administer training.

RESPONSE #46: The requirements are provided in ARM 24.156.2718 of the proposal and are specifically available on the NREMT website.

COMMENT #47: One commenter asked if medical directors can "sign off" on continued competency for EMTs and AEMTs.

RESPONSE #47: ARM 24.156.2718(2)(b) provides that a lead instructor or medical director may issue and sign a certificate of completion of the NREMT continued competency requirements.

COMMENT #48: One commenter stated that holding the lead instructor responsible for the training and documentation may put hardship on rural volunteer services.

RESPONSE #48: The board disagrees. Allowing NREMT certification to meet continued competency requirements simplifies documentation for both paid and volunteer lead instructors. Additionally, current rules already place responsibility for the quality, consistency, and management of refresher training at the EMR and EMT levels on the lead instructor and allow a medical director to delegate that responsibility to a lead instructor at higher levels of ECP licensure. The rule proposal does not include additional requirements.

COMMENT #49: Several commenters oppose any rule changes that do not "grandfather" Montana ECPs licensed by taking the alternative written examination.

RESPONSE #49: ARM 24.156.2718(2)(b) provides that a lead instructor or medical director may issue and sign a certificate of completion of the NREMT continued competency training as an alternative to (2)(a), which requires NREMT certification. Additionally, the rule proposal does not require currently licensed ECPs to pass a NREMT examination in order to maintain current licensure.

COMMENT #50: One commenter stated that NREMT requires a training officer or medical director to verify submitted education completion but does not require those individuals to be licensed by the Montana Board of Medical Examiners.

RESPONSE #50: Board rules currently provide that a Montana-licensed physician acting as a medical director is ultimately responsible for ensuring the competency of ECPs working under his or her supervision. Additionally, a lead instructor as defined by board rules is also licensed by the board.

COMMENT #51: One commenter believed the rule proposal does not identify which level of licensee requires a lead instructor versus a medical director, and that a lead instructor with an EMR license should not be able to verify the continued competency for a higher-level licensee.

RESPONSE #51: The board suggests the commenter review ARM 24.156.2718, as the first part of the comment is addressed in the rule language. Additionally, the board's current rules do not address any requirement regarding the level of the lead instructor in relation to the licensure level of ECPs participating in the course or being instructed; thus, the suggested change would be a substantive change to the rule proposal. The board also suggests the commenter review the definition and responsibilities of a lead instructor specified in board rules.

COMMENT #52: One commenter suggested the board amend ARM 24.156.2718(2) to require that lead instructors verify documentation of continued competency for EMR and EMT licensees and that medical directors verify the same for AEMT and paramedic licensees.

RESPONSE #52: The suggested amendment would be a substantive change to the rule proposal that cannot be made in a final notice. The board may consider the suggestion in future rulemaking.

COMMENT #53: One commenter stated that the continued competency requirements are vague because hour requirements have been removed.

RESPONSE #53: The board disagrees and suggests the commenter review the continued competency requirements on the NREMT website, noting the information contains numerous clearly stated hour requirements for each level of licensure.

Comments 54 through 65 apply to ARM 24.156.2711, 24.156.2713, and 24.156.2721:

COMMENT #54: Three commenters requested the board expend funds to "fix" or update the current alternative exam rather than discontinue its administration.

RESPONSE #54: The board determined that maintaining a separate, duplicative examination is not a responsible use of board funds, which are ultimately generated by fees paid by licensees.

COMMENT #55: One commenter feels that NREMT assessments at higher licensure levels are not "done" as well as the alternative state examinations. The commenter specifically mentioned the AEMT practical skills assessment.

RESPONSE #55: The board disagrees.

COMMENT #56: Several commenters expressed their dislike of the current alternative state examination. Commenters noted that the alternative state examination is "substandard," "not validated," "not user friendly," "not well put together," and "a joke." Additionally, several commenters noted that the exam question answer bank is accessible online.

RESPONSE #56: The board recognizes issues associated with the alternative state examination, and addressing those issues is one of the main purposes for this rule proposal. The board believes the NREMT examination provides a standardized, psychometrically evaluated, and secure assessment for ECP license applicants.

COMMENT #57: One commenter stated that as a student, having two exams as options for licensure is confusing, and sets students up for complications in seeking employment with an EMS agency because many agencies require NREMT certification for employment.

RESPONSE #57: The board appreciates all comments received in the rulemaking process.

COMMENT #58: Numerous commenters suggested that requiring NREMT examination for initial licensure will align Montana requirements with surrounding states' requirements, which may reduce agency barriers to ECP recruitment.

RESPONSE #58: The board concurs.

COMMENT #59: Two commenters expressed concern that "NREMT does not provide a testing service." One commenter specified "a testing service for licensure agencies to utilize."

RESPONSE #59: The testing site can be conveniently located for the applicant. Written examinations are administered by a third party with procedures that ensure secure and standardized administration. Although NREMT itself may not conduct the exams, NREMT does develop the examinations and ensures the exams are psychometrically evaluated.

COMMENT #60: Multiple commenters expressed concerns regarding rural ECP candidates' access to NREMT examinations and approved testing centers. Commenters specifically noted travel time and associated costs. Commenters also suggested the proposed rules created an "access barrier" for rural ECPs.

RESPONSE #60: Approved testing centers ensure examination administration integrity. Additionally, NREMT allows remote proctored testing utilizing a computer at any location with an internet connection for EMT and AEMT level examinations, which make up a majority of the examinations administered in Montana. NREMT is

also currently analyzing testing site and access needs in Montana and assisting to ensure access to NREMT examination.

COMMENT #61: One commenter stated that the current alternative written examination content is adequate and that there are not integrity problems or accommodations issues with it.

RESPONSE #61: The board disagrees.

COMMENT #62: One commenter stated that requiring NREMT examination for initial ECP licensing will enhance prehospital patient care.

RESPONSE #62: The board agrees.

COMMENT #63: Numerous commenters support the use of a high-quality examination that is readily available to ECP licensure candidates.

RESPONSE #63: The board agrees and believes the rule proposal provides for a high-quality examination that is readily available to ECP candidates.

COMMENT #64: Numerous commenters expressed concern regarding the number of testing centers available to administer NREMT examinations to ECP licensure candidates. Commenters opined that requiring ECPs to travel long distances to a test location will reduce the number of ECPs licensed in Montana.

RESPONSE #64: NREMT allows remote proctoring for EMT and AEMT level examinations, which are the two most common examinations administered in Montana. Remote proctored examinations require the same equipment that the alternative state examination requires, which is a computer and internet access. The board disagrees that the changes will reduce the number of ECPs licensed in Montana.

COMMENT #65: Numerous commenters supported delaying adoption of the rule proposal until a plan is implemented to establish additional testing sites equally distributed across the state, particularly in eastern Montana, and to consider the use of workforce centers or colleges as testing sites.

RESPONSE #65: The board has carefully considered the impact to ECPs practicing in rural areas. The board surveyed ECP licensees and medical directors, analyzed geographic examination and licensure data, and included stakeholders in several discussions prior to filing this rule proposal. Recorded minutes are available on the board's website (May 6 and 7, 2021; July 16, 2021; September 17, 2021). NREMT allows remote proctoring for EMT and AEMT level examinations, which are the two most common examinations administered in Montana. Remote proctored examinations require the same equipment that the alternative state examination requires, which is a computer and internet access. NREMT is also assisting to identify and establish additional testing sites.

Comments 66 through 69 apply to ARM 24.156.2711, 24.156.2713, and 24.156.2718:

COMMENT #66: Two commenters were concerned the proposed rules require Montana ECPs to join and pay for an organization they may not wish to be a part of.

RESPONSE #66: The proposed rules require an applicant to provide proof of NREMT certification equal to or greater than the licensure level applied for, current substantially equivalent licensure in another state, or passage of an assessment exam administered by NREMT if the applicant does not qualify for NREMT certification. The proposed rules also allow for renewal of a license with submission of a current NREMT certification or proof of completion of the NREMT continued competency requirements signed by the licensee's lead instructor and/or medical director, which provides a method to renew without current NREMT certification.

COMMENT #67: One commenter stated that NREMT is not a national organization, and that it is a private company.

RESPONSE #67: The board is aware that NREMT is not a governmental organization; however, it is a national organization. NREMT is a not-for-profit national organization that provides a valid, uniform process to assess the knowledge and skills required for competent practice by EMS professionals.

COMMENT #68: One commenter recommended establishing a proficiency verification requirement to be governed by the board and allow public and licensee input over its design and requirements.

RESPONSE #68: The board believes the proposed rule changes meet this request.

COMMENT #69: One commenter stated that the proposed rules require a NREMT training officer to conduct ECP courses and that may create difficulties.

RESPONSE #69: The rule proposal does not require a NREMT training officer to conduct ECP courses.

Comments 70 through 79 apply to ARM 24.156.2711, 24.156.2713, 24.156.2718, and 24.156.2721:

COMMENT #70: A few commenters stated that the board is establishing regulation that is not subject to public input or review and one believed that NREMT does not allow for public input in establishing its requirements.

RESPONSE #70: The board has presented these rule changes in compliance with the Montana Administrative Procedure Act, including this comment and response process. Additionally, the board solicited stakeholder involvement on several occasions through meetings in 2021, prior to drafting this proposal for official public

comment. Further, NREMT maintains a board which solicits public comment for any rule and requirement changes NREMT intends to implement. NREMT's process and procedure for such comment is available on its website.

COMMENT #71: Two commenters stated that alignment with NREMT standards will make ECP licenses more portable, allowing Montana ECPs to better aid other states when need arises.

RESPONSE #71: The board agrees and appreciates all comments received in the rulemaking process.

COMMENT #72: One commenter stated that NREMT does not allow the board to have input in setting its requirements.

RESPONSE #72: NREMT accepts public comment and maintains a publicly available process detailed on its website. The board remains the statutorily authorized licensing authority with jurisdiction over Montana licensees.

COMMENT #73: One commenter supported the proposal because NREMT certification supports the Federal Aviation Administration regulatory requirements regarding patient care.

RESPONSE #73: The board appreciates all comments received in the rulemaking process.

COMMENT #74: One commenter stated that the proposal will not cause Montana to lose any currently licensed ECPs.

RESPONSE #74: The board agrees.

COMMENT #75: Three commenters noted that Montana has utilized NREMT certification for licensure and renewal for many years and that many services or agencies currently and historically require ECPs to be NREMT certified.

RESPONSE #75: The board agrees.

COMMENT #76: Two commenters supported standardized training.

RESPONSE #76: The board agrees.

COMMENT # 77: One commenter noted that not all states have adopted NREMT.

RESPONSE #77: The board appreciates all comments received in the rulemaking process.

COMMENT #78: One commenter expressed concern regarding NREMT controlling qualification requirements for lead instructors and medical directors.

RESPONSE #78: The board disagrees as the comment is inaccurate. Medical director endorsement requirements are established by board rule in ARM 24.156.2732 and the lead instructor endorsement is found in ARM 24.156.2751.

COMMENT #79: Numerous commenters stated the licensure process should ensure ECPs are properly licensed and provide proper patient care.

RESPONSE #79: The board agrees.

Comments 80 through 82 apply to NEW RULE I:

COMMENT #80: Two commenters were concerned the board no longer employs a training coordinator.

RESPONSE #80: The comment is outside the scope of the rule proposal and FTE allocations are made by the department and not within the board's jurisdiction.

COMMENT #81: Numerous commenters generally supported a reduction of fees but were concerned that a fee reduction may jeopardize hiring of a qualified physician as board medical director, prevent addressing delays with filed complaints, and prevent establishing additional NREMT testing sites.

RESPONSE #81: Hiring of staff is the department's responsibility and not within the board's jurisdiction. Additionally, as noted in the general reason for this proposal, the reduction of fees is necessary to comply with statutory requirements of 37-1-134, MCA.

COMMENT #82: Numerous commenters suggested the board hire a part-time physician medical director to support medical directors, emergency service managers, and offer expert guidance to the board. The commenters noted that the board established and hired a medical director ten years ago, and that Montana physicians supported a license fee increase at the time to fund the position since it impacted the delivery of care in rural settings. The commenters suggested that the medical director could update practice guidelines, endorsement requirements, and serve as liaison to the Department of Public Health and Human Services.

RESPONSE #82: This comment is outside the scope of the rule proposal. Hiring staff is a department responsibility and not within the board's jurisdiction.

4. The board has amended ARM 24.156.2701 exactly as proposed.

5. The board has adopted NEW RULE I (ARM 24.156.409) exactly as proposed.

6. The board has repealed ARM 24.156.601, 24.156.631, 24.156.1002, 24.156.1302, 24.156.1402, 24.156.1618, 24.156.2721, and 24.156.2731 exactly as proposed.

7. The board has amended ARM 24.156.2711, 24.156.2713, and 24.156.2718 with the following changes, stricken matter interlined, new matter underlined:

24.156.2711 ECP LICENSURE QUALIFICATIONS (1) remains as proposed.

(2) If an applicant ~~does not qualify~~ is not eligible for certification by NREMT, the board or its designee may approve the applicant to undergo an assessment exam administered by NREMT and provide proof of passage of the assessment exam to the department in lieu of a NREMT certification card.

AUTH: 37-1-131, 50-6-203, MCA
IMP: 37-1-304, 50-6-203, MCA

24.156.2713 ECP LICENSE APPLICATION (1) remains as proposed.

(2) If an applicant ~~does not qualify~~ is not eligible for certification by NREMT, the board or its designee may approve the applicant to undergo an assessment exam administered by NREMT and provide proof of passage of the assessment exam to the department in lieu of a NREMT certification card.

(3) through (7) remain as proposed.

AUTH: 37-1-131, 50-6-203, MCA
IMP: 37-1-131, 50-6-203, MCA

24.156.2718 CONTINUED COMPETENCY REQUIREMENTS (1) through (2)(a) remain as proposed.

(b) a certificate of completion, issued and signed by the lead instructor and/or medical director, of the NREMT continued competency training requirements.

(3) through (5) remain as proposed.

AUTH: 50-6-203, MCA
IMP: 50-6-203, MCA

BOARD OF MEDICAL EXAMINERS
CHRISTINE EMERSON, R.D.
PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 5, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.93.101 pertaining to child-placing agency definitions	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 11, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-974 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 214 of the 2022 Montana Administrative Register, Issue Number 3.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

4. This rule amendment is effective April 16, 2022.

/s/ Heidi Sanders
Heidi Sanders
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State April 5, 2022.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 38.5.8301 and 38.5.8302 pertaining to Montana's Renewable Energy Resource Standard	))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On February 11, 2022, the Department of Public Service Regulation published MAR Notice No. 38-5-253 pertaining to the public hearing on the proposed repeal of the above-stated rules at page 221 of the 2022 Montana Administrative Register, Issue Number 3.

2. On March 7, 2022, the department held a public hearing on the proposed repeal of the above-stated rules. The department received no public comments.

3. The department has repealed ARM 38.5.8301 and 38.5.8302 as proposed for the reasons stated in the initial notice.

/s/ Lucas Hamilton
Lucas Hamilton
Rule Reviewer

/s/ James Brown
James Brown
President
Public Service Commission

Certified to the Secretary of State April 5, 2022.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2021. This table includes notices in which those rules adopted during the period October 8, 2021, through March 25, 2022, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2021, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2021 or 2022 Montana Administrative Registers.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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